

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MERLE C. WEST, and  
JANICE E. BRADFORD WEST

Plaintiffs,

V.

AIR & LIQUID SYSTEMS  
CORPORATION, et al.,

Defendants.

C.A. NO. 1:18-cv-00688

**GENERAL ELECTRIC COMPANY'S MOTION TO  
TRANSFER PURSUANT TO §1404**

Pursuant to 28 U.S.C. § 1404, Defendant General Electric Company (“GE”) hereby respectfully moves this Court for an order transferring this case to the United States District Court for the District of Maine.

28 U.S.C. § 1404 allows this Court to transfer an action to any other district where it may have been brought, “for the convenience of the parties and witnesses, in the interest of justice...” As more fully set forth in the attached Memorandum of Law, the events giving rise to Plaintiffs’ claims occurred in Maine. Plaintiffs are lifelong residents of Maine and Plaintiff Merle West’s employment history involves working for Maine companies almost exclusively, at Maine locations. Plaintiffs have no meaningful connections to Rhode Island. In short, Maine is the more appropriate forum for this case.

**WHEREFORE** Defendant, General Electric Company, respectfully requests that this Court transfer this action to the United States District Court for the District of Maine and

pursuant to Local Rule CV 7(a)(c) requests an oral argument on this matter. The estimated required time for an oral hearing will be one half hour.

Dated: February 5, 2019

THE DEFENDANT

GENERAL ELECTRIC COMPANY

By its Attorney,

/s/ Anne E. Shannon  
Anne E. Shannon  
RI Bar: #9591  
McCarter & English LLP  
265 Franklin St  
Boston, MA 02110  
Phone: 617-449-6576  
AShannon@mccarter.com

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants (none) on February 5, 2019

/s/ Anne E. Shannon  
Anne E. Shannon

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MERLE C. WEST, and  
JANICE E. BRADFORD WEST

Plaintiffs,

V.

AIR & LIQUID SYSTEMS  
CORPORATION, et al.,

Defendants.

C.A. NO. 1:18-cv-00688

**GENERAL ELECTRIC COMPANY'S MEMORANDUM OF LAW IN SUPPORT**  
**OF ITS MOTION TO TRANSFER PURSUANT TO §1404**

## I. INTRODUCTION

Pursuant to 28 U.S.C. §1404, this case should be transferred to the United States District Court for the District of Maine (“District of Maine”). Not only is Plaintiff Merle West (“Mr. West”) a current, and lifelong, resident of Maine, the allegations at the heart of Plaintiffs’ complaint all occurred in Maine. Specifically, Mr. West alleges exposure to asbestos at various work and construction sites in Maine. Conversely, Plaintiffs do not have any relevant or meaningful connections to Rhode Island. Therefore, as a matter of convenience, and in the interest of justice, the District of Maine is the most appropriate forum for this case.

## II. FACTS AND BACKGROUND

On September 5, 2018, Plaintiffs filed their Complaint in Providence County Superior Court alleging that Mr. West's exposure to Defendants' asbestos-containing products caused him to develop mesothelioma. (Ex. A., Complaint; Ex. B., Vol. 1, 13: 16-21). Defendant General

Electric Company (“GE”) timely removed the matter to this Court. (Ex. C., Summons and Notice of Removal).

Mr. West is a current, and lifelong, resident of Maine, growing up in Wiscasset, and later moving to Alna, where he still resides with his wife, Defendant Janice Bradford West. (Exhibit B, Merle West Deposition, Vol. 1, 12:6-8; Vol. 2, 341: 8-13; 304: 13-22; 373: 21-24). At no point has Mr. West ever lived in Rhode Island. (Vol. 2, 627: 2-20).

All of Mr. West’s employment history involves working for Maine companies, and, almost exclusively, at Maine locations. In 1967, shortly after high school, Mr. West began working at Bath Iron Works (“BIW”) in Bath, Maine. (Vol. 2, 341: 14 – 342: 1). Mr. West worked, on and off, at BIW for approximately 25 years.<sup>1</sup> Following BIW, Mr. West spent the remainder of his career with Cianbro, a Pittsfield, Maine contractor where he primarily worked at paper mills and power plants within Maine. (Vol. 1, 216:12-24; 235: 10-15; 154:23-1; 165: 23-166:18; Vol. 3, 656: 10- 657:8; 664:7-18; Vol. 4, 1077:1-14). While working for Cianbro, Mr. West also participated in a handful of short term projects occurring in Massachusetts, New York and New Hampshire. (Vol. 1, 211: 3-9; 213: 10-13; 216:12-24; 235: 10-16; 154:23-1; 165: 23 - 165:24; Vol. 2, 579: 1-7; 587: 6-17; Vol. 3, 656: 10- 657:8; 664:7-18; Vol. 4, 1077:1-14). Mr. West never work in Rhode Island or for a Rhode Island company. (Vol. 2, 627: 2-20).

Mr. West’s medical diagnosis and treatment primarily occurred in Maine. (Vol. 1, 13: 16-18:12; Vol. 2, 627: 12-14). Mr. West did not received any medical diagnosis or treatment in Rhode Island. Id.

---

<sup>1</sup> In 1972 Mr. West left BIW for a brief time to work with a friend as a carpenter in Alna, Maine. (Vol. 1, 130: 10-131:20) . He went back to BIW in 1973 until he was laid off in the spring of 1974. (Vol. 1, 131: 17-24; 136: 1-3). After getting laid off, he built his home in Maine, worked for a local contractor, and was self-employed. (Vol. 1, 136: 7-22). In 1978, Mr. West was re-hired by BIW. (Vol. 1, 147: 1-3).

### III. LAW AND ARGUMENT

The District of Maine is the proper forum for this matter. Pursuant to 28 U.S.C. § 1404(a) “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). “The statute is intended to place discretion in the district courts to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness.” Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 23 (1988).

After first determining whether an action could have been brought in the transfer forum, a court then considers a number of “public and private” interest factors. Brian Jackson & Co. v. Eximias Pharmaceutical Corp., 248 F. Supp. 2d 31, 38-39 (D.R.I. 2003). These factors include: (1) a plaintiff’s choice of forum; (2) ease of access to sources of proof; (3) availability of compulsory process to compel attendance of witnesses; (4) cost of attendance of willing witnesses; (5) ease of a view of premises, if necessary; (6) enforceability of the judgment, if obtained; (7) advantages and obstacles to a fair trial; (8) status of the court's trial calendar; and (9) familiarity of forum with applicable state law. Boothroyd Dewhurst, Inc. v. Bd. of Trs. of the Leland Stanford Junior Univ., Civ. A. No. 92-0075-P, 1993 WL 385713, at \*7 (D.R.I. July 8, 1993).

Here, as Plaintiffs reside in Maine, and the majority of allegations occurred in Maine, this action certainly could have been brought in the District of Maine. Similarly, Plaintiffs’ choice of forum “is not entitled to substantial weight in this matter because [Plaintiffs are] nonresident[s], with no obvious connections to Rhode Island.” Tristar Prods., Inc. v. Novel Brands, LLC, 267 F. Supp. 3d 380, 383 (D.R.I. 2017) (transferring case where plaintiff was headquartered, and the alleged acts occurred, in New Jersey); see McEvily v. Sunbeam-Oster Co., 878 F. Supp. 337,

344 (D.R.I. 1994) (the burden of the party requesting transfer “is lightened when a plaintiff has not brought suit on his ‘home turf’ or at the site of the activities at issue in the law suit.”). Further, as this action has no meaningful connection to Rhode Island, the balance of public and private factors weigh decisively in favor of the requested transfer.

A. The District of Maine is the Most Convenient Forum.

The first six factors, the most important being the convenience of witnesses, all weigh in favor of the requested transfer. McEvily v. Sunbeam-Oster Co., 878 F. Supp. 337, 344–45 (D.R.I. 1994) (“The [witness] factor is not merely a consideration of the number of witnesses located in or near the respective forums, but the nature and quality of their testimony in relationship to the issues of the case”) (citing Houk v. Kimberly-Clark Corp., 613 F.Supp 923, 928 (W.D. MO. 1985)).

Adjudication of Plaintiffs’ claims requires discovery and testimony related to: (1) Mr. West’s work history; (2) sites where Mr. West alleges he was exposed to asbestos; and (3) Mr. West’s medical diagnosis, care and treatment. All of these primarily occurred in Maine, under the supervision of Maine companies and Maine physicians, and none occurred in Rhode Island. Therefore, the majority of critical witnesses, documents and locations will likely be in Maine.<sup>2</sup> Additionally, Plaintiffs both reside in Maine, and there is no indication that they intend to move.

Although it may be necessary to conduct Rule 30(b)(6) depositions of certain Defendants’ corporate witnesses, the majority of these witnesses are likely to be spread across the country, and there is no indication that a substantial number of corporate witnesses might be located in Rhode Island. In any event, enforcing a potential judgment should not be materially more difficult in Maine than Rhode Island. Therefore, overall, the District of Maine would

---

<sup>2</sup> Although no witnesses have been formally identified by the Plaintiffs, there is no indication that any would be located in Rhode Island.

actually be *more* convenient for the Plaintiffs and any potential witnesses. This is exemplified by the fact that Mr. West's deposition took place in Bath, Maine, and not in Rhode Island where he has no connections.<sup>3</sup>

B. Public Policy Factors Favor Adjudication in the District of Maine.

There "is a local interest in having localized controversies decided at home." Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 509 (1947) ("In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only."). Further, "jury duty is a burden that ought not be imposed upon the people of a community which has no relation to the litigation." Id. at 508-509. There is also an appropriateness "in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." Id. at 509. There is also an appropriateness "in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." Id. at 509

Here Plaintiff has demanded a jury trial for claims that relate directly to people, businesses, and locations within Maine. See Complaint. The jury's familiarity with the Maine area will likely be important. Conversely, it would be patently unfair to require the citizens and judiciary of Rhode Island to devote resources to adjudicating a case that has no connection to the state's community. Therefore, Maine's local interest in this case and its "concomitant fairness in having its citizens sit on a jury to decide it" favor transfer. McEvily v. Sunbeam-Oster Co., 878 F.

---

<sup>3</sup> Plaintiff Merle West's deposition was taken over consecutive days: November 27, 28, 29, 30, 2018 in Bath, Maine.

Supp. 337, 348 (D.R.I. 1994) (granting transfer and noting that plaintiff has tenuous connection with Rhode Island at best).

The District of Maine is also less congested than the District of Rhode Island. According to the Federal Judicial Caseload Statistics, in the calendar year ending March 31, 2018, there were 709 cases pending in the District of Rhode Island compared to the 433 cases pending in the District of Maine. See Exhibit C, Federal Judicial Caseload Statistics.<sup>4</sup> In the District of Rhode Island there were 230 civil cases per judgeship, as compared to 173 cases in the District of Maine. Id. Finally, the median time from filing to disposition in a civil case over a five-year period is 16.1 months in the District of Rhode Island compared to 7.3 months in the District of Maine. Id. Thus, Plaintiffs are actually more likely to obtain a speedier adjudication of their claims in the District of Maine.

#### **IV. CONCLUSION**

The factors for evaluating a 28 U.S.C. § 1404 request clearly weigh in favor of a transfer. Neither the Plaintiffs, nor their allegations, have any meaningful connections to Rhode Island. Indeed, by transferring this case, this Court will bring it closer to Plaintiffs' residence and the residence of expected witnesses, and will not prejudice Plaintiffs in any material manner. Consequently, it is not only a matter of convenience, but also in the interest of justice, that this case be litigated in the District of Maine where the alleged acts giving rise to this action occurred.

---

<sup>4</sup> <https://www.uscourts.gov/statistics-reports/analysis-reports/federal-judicial-caseload-statistics>



**WHEREFORE**, for the foregoing reasons, Defendant, General Electric Company, respectfully requests that this Court transfer this action to the United States District Court for the District of Maine.

Dated: February 5, 2019

THE DEFENDANT

GENERAL ELECTRIC COMPANY  
By its Attorney,

/s/ Anne E. Shannon  
Anne E. Shannon  
RI: # 9591  
McCarter & English LLP  
265 Franklin Street  
Boston, MA 02110  
617-449-6576  
AShannon@mccarter.com

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants (none) on February 5, 2019

/s/ Anne E. Shannon  
Anne E. Shannon

# **EXHIBIT A**

**STATE OF RHODE ISLAND  
PROVIDENCE, SC**

**SUPERIOR COURT**

**MERLE C. WEST and JANICE E. BRADFORD WEST,  
his wife,**

***Plaintiffs,***

**v.**

**CIVIL ACTION NO.:**

**AIR & LIQUID SYSTEMS CORPORATION,  
AURORA PUMP COMPANY,  
ARMSTRONG PUMPS, INC.,  
ALBANY INTERNATIONAL, a Corporation,  
ALLIED GLOVE CORPORATION,  
BAYER CROPSCIENCE f/k/a Amchem PRODUCTS,  
BELL & GOSSETT,  
BSM PUMP CORP. formerly BROWN AND SHARPE,  
CBS CORPORATION,  
CRANE COMPANY,  
DEZURIK, INC.,  
EATON CORPORATION,  
ECR INTERNATIONAL, as successor-in-interest to Utica Boiler Company,  
FLOWSERVE CORPORATION,  
FOSTER WHEELER, LLC,  
VIACOM INC.,  
GARDNER-DENVER, INC.,  
GENERAL ELECTRIC COMPANY,  
GOULD PUMPS,  
GRINNELL, LLC,  
HAMMOND VALVE COMPANY,  
HONEYWELL INTERNATIONAL, INC.,  
IMO INDUSTRIES, INC.,  
INDUSTRIAL HOLDINGS CORPORATION f/k/a Carborundum Co.,  
INGERSOLL-RAND COMPANY,  
INTERNATIONAL PAPER CO.,  
MAINE YANKEE ATOMIC POWER COMPANY,  
METROPOLITAN LIFE INSURANCE COMPANY,  
MILWAUKEE VALVE CO,  
NEW ENGLAND INSULATION, INC.,  
NEW YORKER BOILER COMPANY,  
THE WM. POWELL COMPANY,  
P.I.C. CONTRACTORS, INC.,  
PACKINGS & INSULATIONS CORPORATION,**

**RAINBIRD CORPORATION,  
KIMBERLY-CLARK CORPORATION,  
successor-in-interest to Scott Paper Company,  
WARREN PUMPS,  
PEERLESS PUMPS, INC.,  
SAPPI FINE PAPER NORTH AMERICA,  
successor-in-interest to S. D. Warren Company,  
SEARS ROEBUCK & COMPANY,  
SID HARVEY INDUSTRIES, INC.,  
Successor-in-interest to Sid Harvey of New England, Inc.,  
THE GAGE COMPANY,  
TRANE COMPANY, successor-in-interest to American Standard, Inc.,  
VELAN VALVE CORPORATION,  
F. W. WEBB COMPANY,  
WHEELER PROTECTIVE APPAREL, INC.,**

***Defendants.***

**COMPLAINT AND JURY DEMAND**

1. Plaintiffs Merle C. West and Janice E. West, his wife are individuals residing at 1098 West Alna Road, Alna, ME 04535.

2 Plaintiff Merle C. West worked as a boilermaker and machinist at Bath Iron Works from 1967 to 1972 and from 1978 to 1987; as a carpenter-millwright for Cianbro and for other contractors between 1988 and 1999 at various industrial sites.

3. Defendant Air & Liquid Systems Corporation is the successor-in-interest to Buffalo Pumps, Inc. is a Delaware corporation with its principal place of business in Albany, New York and at all relevant times it did business in the States of Rhode Island and Maine.

4. Defendant Aurora Pump Company is a North Carolina corporation with its principal place of business in Illinois and at all relevant times it did business in the State of Rhode Island and in the States of Rhode Island and Maine.

5. Defendant Armstrong Pumps, Inc. is a New York corporation with its principal place of business in the State of New York and at all times relevant did business in the States of Rhode Island and Maine.

6. Defendant Albany International, Inc. is a Delaware Corporation with its principal place of business in Albany, New York and at all times relevant did business in the States of Rhode Island and Maine.

7. Defendant Allied Glove Corporation is a Delaware corporation with its principal place of business located in Milwaukee, WI and at all times relevant did business in the State of Rhode Island and Maine.

8. Defendant Bayer Cropscience, Inc. is a Delaware corporation with its principal place of business in Pennsylvania and at all times relevant it did business in the States of Rhode Island and Maine.

9. Defendant Bell & Gossett is an Illinois corporation with its principal place of business in Morton Grove, Ill and at all times relevant did business in the States of Rhode Island and Maine.

10. Defendant BSM Pump Corp. formerly Brown and Sharpe is a Rhode Island corporation with its principal place of business located in N. Kingstown, RI and at all times relevant also did business in the State of Maine.

11. Defendant CBS Corporation, n/k/a Viacom, Inc. is a New York corporation with its principal place of business in New York and at all relevant times it did business in the States of Rhode Island and Maine.

12. Defendant Crane Co. is a New Jersey corporation with its principal place of

business in New Jersey. At all relevant times it did business in the States of Rhode Island and Maine.

13. Defendant DeZurik, Inc. is a Kansas corporation with its principal place of business located in Ellsworth, KS and at all times relevant did business in the States of Rhode Island and Maine.

14. Defendant Eaton Corporation, successor-in-interest to Cutler-Hammer, Inc. is an Ohio corporation with its principal place of business located in Cleveland, Ohio and at all times relevant did business in the States of Rhode Island and Maine.

15. Defendant ECR International is a New York corporation with its principal place of business in New York, is successor-in-interest to Utica Boiler Company and at all times relevant hereto did business in the State of Rhode Island and State of Maine.

16. Defendant Flowserve Corporation, successor-in-interest to Durametallic is a Michigan corporation with its principal place of business located in Kalamazoo, MI and at all times relevant did business in the States of Rhode Island and Maine.

17. Defendant Foster Wheeler, LLC is a New York corporation with its principal place of business located in New Jersey and at all times relevant did business in the States of Rhode island and Maine.

18. Defendant Gardner-Denver, Inc. is a Pennsylvania corporation with principal place of business located in Philadelphia, Pa. and at all times relevant did business in the States of Rhode Island and Maine.

19. Defendant General Electric Company is a New York corporation with its principal place of business in New York and at all relevant times it did business in the States of

Rhode Island and Maine.

20. Defendant Gould Pumps is a New Jersey corporation with its principal place of business in New Jersey and at all relevant times it did business in the States of Rhode Island and Maine.

21. Defendant Grinnell, LLC is a Mississippi corporation with principal place of business located in Upper Saddle River, New Jersey and at all times relevant did business in the States of Maine and Rhode Island.

22. Defendant Hammond Valve Company is a Wisconsin corporation with its principal place of business located in New Berlin, WI and at all times relevant did business in the States of Rhode Island and Maine.

23. Defendant Honeywell International, Inc. is a Delaware corporation, having its principal place of business located in Pittsburgh, Pa. and is qualified to do business in the States of Rhode Island and Maine.

24. The Defendant, IMO Industries, Inc., f/k/a IMO Delaval, Inc., f/k/a Transamerica DeLaval, Inc., f/k/a DeLaval Turbine, Inc., DeValco Corporation is a corporation incorporated under the laws of the state of New York, having its principal place of business located in New York, and at all times relevant did business in the States of Rhode Island and Maine.

25. Defendant Industrial Holdings Corp. successor-in-interest to Carborundum Company is a New York corporation with principal place of business located in New York and at all times relevant did business in the States of Rhode Island and Maine.

25. Defendant Ingersoll-Rand Co. is a New Jersey corporation with its principal place of business in New Jersey and at all relevant times it did business in the States of Rhode Island



and Maine.

26. Defendant International Paper Company is a New York corporation with its principal place of business in Memphis, TN and at all relevant times did business in the States of Rhode Island and Maine.

27. Defendant Maine Yankee Atomic Power Company is a Maine corporation with principal place of business located in Wiscasset, ME is successor-in-interest to Maine Yankee, Inc. and at all times relevant did business in the States of Maine and Rhode Island.

28. Defendant Metropolitan Life Insurance Company is a mutual life insurance company of the State of New York with its principal place of business in the State of New York and at all relevant times it did business in the States of Rhode Island and Maine.

29. Defendant Milwaukee Valve Co. is a Wisconsin corporation with principal place of business located in Madison, WI and at all times relevant did business in the States of Rhode Island and Maine.

30. Defendant New England Insulation, Inc. is a Massachusetts corporation with its principal place of business located in Canton, Massachusetts and at all times relevant did business in the State of Rhode Island and Maine.

31. Defendant New Yorker Boiler Company is a Pennsylvania corporation with its principal place of business located in Hatfield, Pa. and at all times relevant did business in the States of Maine and Rhode Island.

32. Defendant P.I.C. Contractors, Inc. is a Rhode Island corporation with its principal place of business in Rhode Island. At all relevant times it did business in the States of Rhode Island and Maine.

33. Defendant Packings and Insulations Corporation is a Rhode Island corporation

with its principal place of business in Rhode Island and at all relevant times it did business in the States of Rhode Island and Maine.

34. Defendant Rainbird Corporation is a California corporation with principal place of business located in Azusa, CA, is successor-in-interest to Hammond Valve Company and at all times relevant did business in the States of Rhode Island and Maine.

35. Defendant Kimberly-Clark Corporation is a Delaware corporation with its principal place of business located in Irving, TX and at all relevant times did business in the States of Rhode Island and Maine.

36. Defendant Peerless Pumps, Inc. is a Delaware corporation with principal place of business located in Indianapolis, IN and at all times relevant did business in the State of Rhode Island and State of Maine.

37. Defendant Sappi Fine Paper North America is the successor-in-interest to S. D. Warren Paper is a Delaware Corporation with principal place of business located in Pennsylvania and at all times relevant did business in the State of Rhode Island and State of Maine.

38. Defendant Warren Pumps is a Massachusetts corporation with its principal place of business in Massachusetts and, at all relevant times it did business in the States of Rhode Island and Maine.

39. Defendant Sears Roebuck & Company is a New York corporation with its principal place of business in Chicago, and at all times relevant did business in the State of Rhode Island and State of Maine.

40. Defendant Sid Harvey Industries, Inc., successor-in-interest to Sid Harvey of New England, Inc. is a New York corporation with its principal place of business in Garden City, NY

and at all times material relevant did business in the State of Rhode Island and Maine.

41. Defendant The Gage Company is a Pennsylvania corporation with its principal place of business located in Portland, ME and at all times relevant did business in the States of Rhode Island and Maine.

42. Defendant Trane Company, successor-in-interest to American Standard, Inc. is a Delaware corporation with principal place of business located in Michigan and at all times relevant did business in the State of Rhode Island and State of Maine.

43. The Defendant, Velan Valve Corporation, is a corporation incorporated under the laws of the State of New York, with its principal place of business located in the State of Vermont and all times relevant did business in the States of Rhode Island and Maine.

44. The Defendant F. W. Webb Company is a Massachusetts corporation with principal offices located in Bedford, MA and at all times relevant did business in the State of Maine and State of Rhode Island.

45. Defendant Wheeler Protective Apparel, Inc., is a New Hampshire corporation with principal place of business located in the State of Illinois and at all times relevant did business in the States of Rhode Island and Maine

### **COUNT I**

46. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

47. Defendants mined, processed, manufactured, designed, supplied, delivered, and sold asbestos and asbestos-containing products and/or knowingly gave substantial assistance or encouragement to those who did so, at all times relevant herein.

48. While at work, Plaintiff was caused to inhale, absorb, ingest, and come into contact with asbestos and asbestos-containing products mined, processed, manufactured, designed, supplied, delivered, and/or sold by Defendants.

49. The Defendants were negligent in that they each, jointly and severally:

a. mined, processed, manufactured, designed, supplied, delivered, and/or sold asbestos and asbestos-containing products, and/or knowingly gave substantial assistance or encouragement to those who did so, that they knew, or reasonably should have known, were dangerous, defective, poisonous, and harmful to an individual's health, body, and life;

b. failed to reasonably warn Plaintiff of the harmful effects of exposure to asbestos and asbestos-containing products and/or knowingly gave substantial assistance or encouragement to those who did so;

c. failed to provide Plaintiff with the knowledge as to possible precautions to protect against the harmful effects of asbestos exposure and/or knowingly gave substantial assistance or encouragement to those who did so; and,

d. were otherwise negligent.

50. As a direct and proximate result of the negligence of the Defendants, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, requires medical monitoring, and was otherwise damaged.

51. As a direct and proximate result of the negligence of the Defendants, Plaintiff-spouse has suffered, and will continue to suffer great pain and suffering, mental anguish, a loss of consortium, society, companionship, support, and dependency, and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

## **COUNT II**

52. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

53. At all relevant times, the Defendants, as part of their regular business, mined, processed, manufactured, designed, supplied, delivered, and sold and/or knowingly gave substantial assistance or encouragement to those who did so, asbestos and asbestos-containing products and put them into the stream of commerce in a defective, unsafe, and inherently dangerous condition, and failed to provide reasonable warnings.

54. The asbestos and asbestos-containing products were expected to, and did reach such persons, including Plaintiff, without substantial change in the condition in which they were sold and/or supplied.

55. At all relevant times, the asbestos and asbestos-containing products were used and employed for the purposes for which they were mined, processed, manufactured, designed, supplied, delivered, sold, and intended to be used and in a manner foreseeable to the Defendants.

56. As a direct and proximate result of the defective, dangerous, and unsafe condition of the asbestos and asbestos-containing products that Defendants placed into the stream of commerce, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, and required medical monitoring.

57. As a direct and proximate result of the defective, dangerous, and unsafe condition of the asbestos and asbestos-containing products that Defendants placed into the stream of commerce, Plaintiff-spouse has suffered, and will continue to suffer, great pain and suffering, mental anguish, a loss of society, consortium, companionship, support, dependency and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

### **COUNT III**

#### **JANICE E. BRADFORD WEST v. DEFENDANTS**

58. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

59. The Defendants expressly and impliedly warranted that the asbestos and asbestos-containing products that they mined, processed, manufactured, designed, supplied, delivered, and sold were fit for use, were merchantable, and were reasonably safe for the purpose intended.

60. The Defendants breached their warranty in that the asbestos and asbestos-containing products were defective, unsafe, unreasonably dangerous, ultra-hazardous, and unsuitable for the purpose intended.

61. As a direct and proximate result of the breach by the Defendants, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, required medical monitoring, was otherwise damaged.

62. As a direct and proximate result of the breach by the Defendants, Plaintiff-spouse has suffered, and will continue to suffer great pain and suffering, mental anguish, a loss of consortium, society, companionship, support, and dependency, and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

#### **COUNT IV**

63. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

64. The acts and omissions of Defendants that were the direct and proximate cause of Plaintiffs' injuries were willful, malicious, wanton, undertaken with reckless disregard of the rights of Plaintiffs, and were grossly negligent.

WHEREFORE Plaintiffs demand judgment and punitive damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

**COUNT V**

**AGAINST INTERNATIONAL PAPER COMPANY,  
KIMBERLY-CLARK CORPORATION;  
SAPPI FINE PAPER NORTH AMERICA; and  
MAINE YANKEE ATOMIC POWER COMPANY**

65. The condition of Plaintiff is a direct and proximate result of the negligence of the Defendants, both jointly and severally, in that as premise owners, owned and/or operated premises that were unsafe due to a latent hazardous condition, i.e. transportable, respirable asbestos dust and fibers, as follows:

- a. The Defendants knew that asbestos was present in their mills;
- b. The Defendants failed to advise Plaintiff and/or his employer that he might encounter asbestos in the form of block insulation, pipe covering, gaskets, packing, and other forms during the course of his working at the premises;
- c. The Defendants failed to advise Plaintiff and/or his employer that protective equipment should be utilized when working in areas in which asbestos could be encountered;
- d. The Defendants failed to maintain their premises in a reasonably safe condition and/or properly mark those areas in which asbestos in its' various forms could be encountered;
- e. The Defendants failed to test and properly identify where asbestos could be encountered within their mill, prior to business invitees such as Plaintiff coming onto the premises to perform work; and
- f. The Defendants are negligent for otherwise failing to comply with the applicable State and Federal laws and standards for protecting a business invitee such as Plaintiff.

WEHREFORE Plaintiffs demand damages of Defendants, jointly and severally, plus interest, costs and whatever other further relief this Honorable Court deems right and just.



## **COUNT VI**

66. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

67. Defendants, individually and as agents of one another and as co-conspirators, aided, abetted, encouraged, counseled, assisted, agreed, and conspired among themselves and with other asbestos manufacturers and distributors to injure Plaintiffs.

68. The Defendants knew that the others' conduct constituted a breach of duty and gave substantial assistance or encouragement to the other so to conduct itself.

69. The Defendants acted in the following fashion:

a. Metropolitan Life Insurance Company (Met Life) required a tangible quid pro quo from McGill University in the 1920s in exchange for them providing funding for a study of asbestos disease in Canadian miners. The study revealed asbestos miners suffered from asbestosis. The study was never published and agents of Met Life materially misrepresented in the published literature this known fact.

b. In 1932, Met Life, through its agents Dr. Anthony Lanza, Dr. Fellows, and others, assisted the Johns-Manville Corporation with medical examinations of over 1,000 employees of Johns-Manville's factory in Manville, New Jersey. The report of his study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and therefore was unavailable to scientists studying the issue of asbestos disease. Further collaboration between the conspiring asbestos producers and Met Life officials continued this trend of intentional cover-up.

c. Beginning in approximately 1934, Johns-Manville Corporation, through its agents, Vandiver Brown and attorney J.C. Hobart, and conspirator Raybestos-Manhattan, through its agents, Sumner Simpson and J. Rohrbach, suggested to Dr. Lanza, Associate Medical Director of Met Life (insurers of Manville, Raybestos, and others) that Dr. Lanza publish a study on asbestosis in which Dr. Lanza would affirmatively misrepresent a material fact about asbestos exposure; i.e., the seriousness of the disease process, asbestosis. This was accomplished through intentional deletion of Dr. Lanza's description of asbestosis as "fatal" and through other selective editing at the behest of the asbestos industry that affirmatively misrepresented asbestos as a disease process less serious than it actually is and was known to be then. As a result, Dr. Lanza's study was published in the medical literature in this misleading fashion in 1935. The defendants were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raybestos, and others, as well as Met Life, the insurer.

d. In 1936, conspirators American Brake Block Corporation, Asbestos Manufacturing Company, Gatke Corporation, Johns-Manville Corporation, Keasby & Mattison Company (then an alter-ego to conspirator Turner & Newall), Raybestos-Manhattan, Russell Manufacturing (whose liabilities have been assumed by H.K. Porter Company), Union Asbestos and Rubber Company, and United States Gypsum Company, entered into an agreement with the Saranac Laboratories. Under this agreement, these companies acquired the power to decide what information Saranac Laboratories could publish about asbestos disease and control in what form such publications were to occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to

suppress material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data resulting in numerous misstatements of fact being made at scientific meetings.

e. On November 11, 1948, representatives of the following conspirators met at the headquarters of Johns-Manville Corporation: American Brake Block Division of American Brake and Shoe Foundry, Gatke Corporation, Keasby & Mattison Company (then an alter-ego to conspirator Turner & Newall) Raybestos-Manhattan, Inc., Thermoid Company (whose assets and liabilities were later purchased by H.K. Porter Company,) Union Asbestos and Rubber Company and United States Gypsum Company. U.S. Gypsum did not send a representative to the meeting, but instead authorized Vandiver Brown of Johns-Manville to represent its interest at the meeting and to take action on its behalf.

f. At this November 11, 1948 meeting, these defendants and their representatives decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved the carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos-containing products.

g. At this meeting, the defendants intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensity of asbestos and the health effects of asbestos on humans and the critique of the dust standards and then published it in the medical literature as edited by Dr. Arthur Vorwald. The acts of these defendants were carried out by co-conspirator Defendant Met Life's agent, Dr. Lanza. These defendants thereby fraudulently misrepresented the risks of

asbestos exposure to the public, in general, and the class of persons exposed to asbestos, including Plaintiffs.

h. As a direct result of influence exerted by the above-described conspirators, Dr. Vorwald published Dr. Gardner's edited work in January, 1951, in the Archives of Industrial Hygiene and Occupational Medicine (Vol. 3, No. 1), a journal of the American Medical Association. The published version stressed those portions of Gardner's work that the conspirators wished stressed, but omitted references to cancer, to human asbestosis, and to the inadequacy of the then-established threshold limit values (TLVs). Furthermore, that article made a false claim that the published report was the "complete survey" of Dr. Gardner's work. The defendants thereby fraudulently, affirmatively, and deliberately disseminated this misleading Dr. Vorwald publication to university libraries, government officials, medical doctors, agencies, the public, and others.

i. Such action constituted a material affirmative misrepresentation of the total context of material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was less of a health problem than Dr. Gardner's unedited work indicated.

j. The following conspirators and others were members of the trade association known as Quebec Asbestos Mining Association (Q.A.M.A.): Johns-Manville Corporation, Carey-Canada (individually and as successor to Quebec Asbestos Corporation), the Celotex Corporation (successor to Quebec Asbestos Corporation) National Gypsum Company (n/k/a Asbestos Claims Management Corporation), and Turner & Newall (individually and successor to Bell Asbestos). The members of Q.A.M.A. participated in the above-described misrepresentation of the work of Dr. Gardner published by Dr. Vorwald in the A.M.A. 's

Archives of Industrial Hygiene and Industrial Medicine in 1951. Evidence of the Q.A.M.A.'s involvement in this misrepresentation arises from co-conspirator Johns-Manville's membership in the Q.A.M.A., as well as correspondence from co-conspirators all indicating close monitoring of the editing process by Q.A.M.A.'s representative, Ivan Sabourin, acting on behalf of all Q.A.M.A.'s members.

k. Defendants who were members of the Q.A.M.A., began on or about 1950 to formulate a plan to influence public opinion about the relationship between asbestos and cancer by influencing the medical literature on this subject and then touting and disseminating this literature to the public and to organizations and legislative bodies responsible for regulatory controls of asbestos with the specific intent of misrepresenting the existing scientific information and suppressing contrary scientific data in their possession and control.

l. This plan of misrepresentation and influence over the medical literature began on or about 1950 when the Q.A.M.A. members selected Saranac Laboratories to do an evaluation of whether cancer was related to asbestos. After a preliminary report authored by Dr. Vorwald in 1952 indicated that a cancer/asbestos relationship might exist in experimental animals, the Q.A.M.A. members refused to further fund the study and it was terminated and never publicly discussed.

m. As a result of the termination of this study, these defendants fraudulently withheld information from the public and affirmatively misrepresented to the public and responsible legislative and regulatory bodies that asbestos did not cause cancer, including affirmative misrepresentations by conspirators' agents Dr. Kenneth W. Smith, Dr. Paul Cartier, Dr. Arthur J. Vorwald, Dr. Anthony J. Lanza, Vandiver Brown, and Ivan Sabourin, said misrepresentations being directed to, inter alia, U.S. Government officials, Canadian government

officials, U.S. National Cancer Institute, other medical organizations, and the general public, including Plaintiffs.

n. Subsequently, the Q.A.M.A. defendant conspirators contracted with the Industrial Hygiene Foundation (I.H.F.) and Dr. Daniel Braun to further study the relationship between asbestos exposure, asbestosis and lung cancer. In 1957, Drs. Braun and Truan reported to the Q.A.M.A. that asbestosis did increase a worker's chances of incurring lung cancer.

o. The Q.A.M.A. defendants thereafter caused, in 1958, a publication of the work by Braun and Truan in which the findings regarding increased incidence of cancer in persons with asbestosis was edited out by agents of the Q.A.M.A. The published version of this study contained a conclusion that asbestos exposure did not increase the incidence of lung cancer, a conclusion known by the defendant conspirators to be patently false.

p. By falsifying and causing publication of studies concluding that asbestos exposure did not cause lung cancer and simultaneously omitting a documented finding that asbestosis did increase the risk of lung cancer, the Q.A.M.A. defendants affirmatively misrepresented to the public and concealed from the public the extent of risks associated with inhalation of asbestos fibers.

q. In approximately 1958, the Q.A.M.A. defendants publicized the edited works of Drs. Braun and Truan at a symposium in an effort to fraudulently misrepresent to the public and persons exposed to asbestos that the inhalation of asbestos dust would not cause cancer.

r. The fraudulent misrepresentations beginning in 1946, as elaborated above and continuing with the publication of the 1958 Braun/Truan study, influenced the standards set for the TLVs, and inhibited the lowering of the threshold limit value due to the cancer risk

associated with asbestos inhalation.

s. In 1967, the Q.A.M.A. defendants determined at their trade association meeting that they would intentionally mislead consumers about the extent of risks involved in inhalation of asbestos products.

t. In 1952, a symposium regarding the health effects of asbestos was held at the Saranac Laboratories. The following conspirators were in attendance: Johns-Manville, Turner & Newall, Raybestos-Manhattan, and Q.A.M.A. members by way of their agents, Cartier, Sabourin, and LeChance.

u. At this meeting, the occurrence of lung cancer and asbestosis in product users was discussed and the carcinogenic properties of all fiber types of asbestos was also discussed. In an affirmative attempt to mislead the public about the extent of health risks associated with asbestos, and in an effort to fraudulently conceal those risks from the public, these defendants conspired to prevent publication of the record of this 1952 Saranac Symposium and it was not published. In addition, the conspirators induced Dr. Vorwald not to announce the results of his and Dr. Gardner's animal studies showing excess cancers in animals that thereby fraudulently misrepresenting existing data, albeit secret, that could not be publicized because of the secrecy provisions contained in the 1936 Saranac agreement required by the asbestos industry members.

v. The following conspirators were members of the Magnesia Insulation Manufacturers Association (MIMA): Philip-Carey Corporation (predecessors to Celotex) Johns-Manville, and others.

w. In 1955, these conspirators caused to be published the MIMA 85% Magnesia Insulation Manual. This manual falsely and fraudulently misrepresented that

asbestos-containing products offered no hazard to workers who used these products.

x. The following conspirators were members of the trade organization known as the Asbestos Textile Institute (ATI): Raybestos-Manhattan, Johns-Manville, H.K. Porter, Keasby & Mattison (individually and through its alter-ego Turner & Newall), National Gypsum (n/k/a Asbestos Claims Management Corporation), and others.

y. In 1947, the members of the ATI, received a report from W.C.L. Hemeon regarding asbestosis that suggested re-evaluation of the then-existing TLVs for asbestos exposure. These defendants caused this report not to be published and thereby fraudulently concealed material facts about asbestos exposure from the public and affirmatively misrepresented to the public and class of persons exposed to asbestos that the then-existing TLV was acceptable. Thereafter, these defendant conspirators withheld additional material information on the dust standards from The American Conference of Governmental Industrial Hygienists (ACGIH), thereby further influencing evaluations of TLVs for asbestos exposure.

z. In 1953, conspirator National Gypsum (n/k/a Asbestos Claims Management Corporation), through its agents, in response to an inquiry from the Indiana Division of Industrial Hygiene regarding health hazards of asbestos spray products, refused to mail a proposed response to that division indicating that respirators should be worn by applicators of the products. National Gypsum's response distorted and fraudulently misrepresented the need for applicators of asbestos spray products to wear respirators and fraudulently concealed from such applicators the need for respirators.

aa. In 1955, conspirator Johns-Manville, through its agent Kenneth W. Smith, M.D. caused to be published in the AMA Archives of Industrial Health, an article entitled "Pulmonary Disability in Asbestos Workers." This published study materially altered the results



of an earlier study in 1949 concerning the same set of workers. This alteration of Dr. Smith's study constituted a fraudulent and material misrepresentation about the extent of the risk associated with asbestos inhalation.

bb. In 1955, the National Cancer Institute held a meeting at which conspirators Johns-Manville (individually and as an agent for other alleged co-conspirators) and Dr. Vorwald (as agent of co-conspirators) affirmatively misrepresented that there were no existing animal studies concerning the relationship between asbestos exposure and cancer, when, in fact, the conspirators were in secret possession of several studies that demonstrated that positive evidence did exist.

cc. In 1957, the members of the ATI, jointly rejected a proposed research study on cancer and asbestos and this resulted in fraudulent concealment from the public of material facts regarding asbestos exposure and also constituted an affirmative misrepresentation of the then-existing knowledge about asbestos exposure and lung cancer.

dd. In 1964 the members of the ATI met to formulate a plan for rebutting the association between lung cancer and asbestos exposure that had been recently discussed by Dr. Irving J. Selikoff. Thereafter, these members of the ATI embarked upon a campaign to further misrepresent the association between asbestos exposure and lung cancer.

ee. In 1970, through their agents, Defendants The Celotex Corporation and Carey-Canada, affirmatively misrepresented that it had been in the asbestos business since 1918 and found no reported conditions of asbestosis or lung disease. This constituted a fraudulent misrepresentation about the material facts known to these Defendants.

ff. All conspirators approved and ratified and furthered the previous conspiratorial acts of conspirators Johns-Manville, Raybestos Manhattan, and Anthony J. Lanza,

M.D., acting on behalf of Met Life, and all alleged co-conspirators during the relevant time period and circumstances alleged above, acted as agents and co-conspirators for the other conspirators.

**70. All defendants:**

- a. did a tortious act in concert with the other or pursuant to a common design with them; and/or
- b. knew that each other's conduct constituted a breach of duty and they each gave substantial assistance or encouragement to the other so to conduct himself; and/or
- c. gave substantial assistance to the other in accomplishing a tortious result and its own conduct, separately considered, constitutes a breach of duty to the Plaintiffs.

**71. The acts of the defendants as described above, constitute a fraudulent concealment and/or a fraudulent misrepresentation that proximately caused injury to the Plaintiffs in the following manner:**

- a. The material published or caused to be published by the defendants was false and incomplete in that the Defendants knowingly and deliberately deleted references to the known health hazards of asbestos and asbestos-containing products.
- b. Defendants individually, as members of a conspiracy, as agents of other co-conspirators, and as aiders and abettors of each other intended that the publication of false and misleading reports and/or the nondisclosure of documented reports of the health hazards of asbestos:
  - i. maintain a favorable atmosphere for the continued sale and distribution of asbestos and asbestos-related products;

ii. assist in the continued pecuniary gain of the defendants through the sale of their products;

iii. influence in the defendants' favor proposed legislation to regulate asbestos exposure and;

iv. to provide a defense in lawsuits brought for injury resulting from asbestos disease.

c. Plaintiffs reasonably relied upon the published medical and scientific data documenting the purported safety of asbestos and asbestos-containing products and the absence of published medical and scientific reports on the extent, nature, and existence of hazards of asbestos and asbestos-containing products to continue exposure to asbestos because of a belief that it was safe.

d. Defendants individually, as members of a conspiracy, and as agents of each other intended that Plaintiffs rely upon the published report regarding the safety of asbestos and asbestos-containing products and upon the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-related products, to continue his exposure to these products.

e. Defendants individually, as members of a conspiracy, as agents of each other, as aiders and abettors of each other are and were in a position of superior knowledge regarding the health hazards of asbestos and therefore Plaintiffs had a right to rely on the published reports commissioned by the defendants regarding the health hazards of asbestos and the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-containing products.



f. Plaintiffs suffered and will continue to suffer injury as a direct and proximate result of the acts alleged herein.

72. As a direct and proximate result of the acts of the Defendants, Plaintiff-worker suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, and was otherwise damaged.

## **COUNT VII**

### **JANICE E. BRADFORD WEST V. ALL DEFENDANTS**

73. As a direct and proximate result of the acts of the Defendants, Plaintiff-spouse has been damaged as follows:

a. Plaintiff has been and will continue to be deprived of the services, society and companionship of her husband;

b. Plaintiff has been required to spend money for medicine, medical care, nursing, hospital and surgical attention, medical appliances, and household care for the treatment of her husband;

c. Plaintiff has been and may be deprived of the household contribution of her husband; loss of pension and social security benefits.

WHEREFORE Plaintiff demands judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

Plaintiffs hereby demand a trial by jury.

By their attorneys,

/s/ Vincent L. Greene

Robert J. McConnell, Esq. (#3888)

Vincent L. Greene, Esq. (#5971)

**MOTLEY RICE LLC**

55 Cedar Street

Suite 100

Providence, RI 02903

401-457-7700

401-457-7708 Fax

Providence, RI

Dated: August. 31, 2018

# **EXHIBIT B**

VOLUME 1  
PAGES: 1-279  
EXHIBITS: 1-8

STATE OF RHODE ISLAND

PROVIDENCE, SS.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
NO. 18-6293

\*\*\*\*\*

MERLE C. WEST and JANICE E. \*  
BRADFORD WEST, \*  
Plaintiffs, \*

vs. \*

AIR & LIQUID SYSTEMS CORPORATION, \*  
et al, \*  
Defendants. \*

\*\*\*\*\*

EVIDENTIARY AUDIOVISUAL DEPOSITION OF MERLE C. WEST  
Tuesday, November 27, 2018  
Residence Inn by Marriott  
139 Richardson Street  
Bath, Maine

Darlene Caiazzo Sousa, CSR, LCR NH #139, RPR  
EPPLEY COURT REPORTING, LLC  
Post Office Box 382  
Hopedale, Massachusetts 01747  
508.478.9795 508.478.0595 (Fax)  
www.eppleycourtreporting.com



Merle West

Volume 1

November 27, 2018

12

1 BY MR. CIRILANO:

2 Q. Good morning, Merle. How are you?

3 A. Good.

4 Q. Would you please introduce yourself?

5 A. Merle Clarence West.

6 Q. And what is your address, Merle?

7 A. 1098 West Alna Road, Alna, Maine,  
8 04535.

9 Q. And how old are you today?

10 A. 70.

11 Q. And it is correct that you have been  
12 diagnosed with mesothelioma; is that true?

13 A. Yes.

14 Q. Can you please walk us through how you  
15 came to be diagnosed with mesothelioma? How  
16 did that happen?

17 A. First of May --

18 MR. SUGARMAN: I apologize. For those  
19 on the phone, just remember we're creating a  
20 video record, so if you could please put your  
21 phones on mute -- we're hearing some loud  
22 typing -- it would be appreciated. Thanks.

23 Q. Please continue.

24 A. The first of May the wife and I

Merle West

Volume 1

November 27, 2018

13

1 decided to take a trip to go to Las Vegas to  
2 get a rent-a-car, go to Utah, Arizona and look  
3 at Bryce and Zion, places like that.  
4 Escalante-Staircase and the national parks out  
5 there. Went to Mesa Verde, some of the other  
6 mesas. We made a good two weeks of it. While  
7 I was on that trip, I kept getting these little  
8 pains, you know, nuisance pains. And I didn't  
9 know what they were. So I said, well, when I  
10 get back, I'll go see the doctor. So when I  
11 got back, the first thing I did was went and  
12 seen my doctor.

13 Q. Who is that doctor?

14 A. Dr. --

15 Q. Romac?

16 A. Dr. Michael Romac of Wiscasset. We  
17 started out simple to figure out what it was  
18 and nothing seemed to be working, so I  
19 eventually ended up getting a biopsy to confirm  
20 exactly what I had, and that was what I had.  
21 And I had biphasic mesothelioma.

22 Q. Okay. Now, Dr. Romac, he had you  
23 undergo some diagnostic tests at Miles  
24 Memorial; is that right?

1 A. That was one place, yes.

2 Q. And he didn't like what he saw; is  
3 that true?

4 A. Right.

5 Q. Okay. I think that you had to have  
6 some fluid removed; is that true?

7 A. Yes. Dr. MacDonald at Mid Coast  
8 removed that.

9 Q. Okay. And how did they go about  
10 removing that fluid?

11 A. Put a hole in the side and suck it  
12 out.

13 Q. And was that a difficult or painful  
14 procedure?

15 A. It was not a picnic.

16 Q. Okay. And do you know how much fluid  
17 they drained when they drained fluid?

18 A. From the looks of it, it was, I would  
19 say, around 20, 22 ounces.

20 Q. Okay. And did they have this sent out  
21 to be tested or looked at?

22 A. Yes.

23 Q. And do you know the results of that,  
24 those tests on the fluid?

1 A. It was inconclusive.

2 Q. Okay. Now, when you were seeing Dr.  
3 Romac and you said Dr. MacDonald, and you've  
4 seen some other physicians for your  
5 mesothelioma; is that true?

6 A. Yes.

7 Q. Have any of those physicians told you  
8 what they believe the cause of your  
9 mesothelioma was?

10 A. Yes. I went to a surgeon in Augusta  
11 who did a biopsy, and he said it would just be  
12 a small cut. And when he got done, through, it  
13 was a big cut. So asked him why, and he says,  
14 I didn't like what I saw, because your tumors  
15 are so thick. And anyway, the biopsy come  
16 back, and went back to see him. He gave me the  
17 results which was biphasic.

18 Q. That was Dr. Blank?

19 A. Dr. Seth Blank.

20 Q. That biopsy, was that a difficult or  
21 painful process, procedure?

22 A. It still is. I still can feel that  
23 even now. It's like somebody got a -- grab  
24 ahold of my side, pulling on it like it's a big

Merle West

Volume 1

November 27, 2018

16

1 knot there, yanking on.

2 Q. Okay. I don't know if you told me.  
3 Did they tell you what the cause of  
4 mesothelioma was, what they thought brought it  
5 about?

6 A. They want to know if I ever worked in  
7 a shipyard.

8 Q. Okay. And you told them yes?

9 A. Yeah.

10 Q. Did they ask you about your asbestos  
11 exposure anywhere?

12 A. Yes.

13 Q. Okay. Now, you were -- once they  
14 determined that you had mesothelioma, what  
15 treatment did they decide should be undertaken  
16 initially? How did they start to treat it?

17 A. He didn't recommend any treatment. He  
18 just recommended I go back to Dr. MacDonald who  
19 then recommended me to a Dr. Haney in Topsham.  
20 And I talked to him, and then he recommended to  
21 Dr. Haney that I go to Dana-Farber and Brigham  
22 and Women's for a second opinion.

23 Q. You wanted to get a second opinion?

24 A. Yes.

1 Q. Did you go and get that second  
2 opinion?

3 A. I did.

4 Q. Where did you go?

5 A. I went to Dana-Farber. Dana-Farber,  
6 it was the chemotherapy. We were at Brigham  
7 and Women's; it was surgery.

8 Q. Okay. Do you recall the doctors you  
9 saw at Brigham and Women's and at Dana-Farber?

10 A. Dana-Farber was Dr. Kiel or Kiel. And  
11 Brigham and Women's was Dr. Lebenthal.

12 Q. Okay. Now, what did those physicians  
13 decide should be done in terms of treatment  
14 initially? What were their initial  
15 suggestions?

16 A. Dr. Kiel was about almost exactly the  
17 same as Dr. Haney was.

18 Q. Which was chemotherapy?

19 A. Which was chemotherapy.

20 Q. Okay.

21 A. And that was interested in  
22 immunotherapy more so, and that's like playing  
23 politics. So they would only do that if  
24 chemotherapy failed, which it did.

1 Q. Okay.

2 A. So then I went to Dr. Lebenthal. They  
3 decided, because I was in such good physical  
4 condition, I was never on any medication, and I  
5 had never done drugs or smoked and I wasn't an  
6 alcoholic or anything, that I was a very good  
7 candidate. So I went through about three weeks  
8 of traveling to Boston ever other day.

9 Q. They were planning on having you  
10 undergo surgery; is that what you're telling  
11 us?

12 A. Yes.

13 Q. I'm sorry. Continue on?

14 A. I went through an array of tests,  
15 poking and digging and biopsies, and everything  
16 was coming out great. The last thing they  
17 pulled was an MRI which showed the cancer had  
18 gone into my bones.

19 Q. I'm sorry, Merle. I'm going to be  
20 asking a lot of difficult questions today. If  
21 you ever need to stop to regain your composure,  
22 everybody understands that. It's a very  
23 difficult situation for you. I'm very sorry.  
24 Let us know if you want to take a brief break.

Merle West

Volume 1

November 27, 2018

52

1 built at BIW. Then there was the Gridley, the  
2 Reeves, the Worden and England, the Dale, the  
3 Turner, the Halsey.

4 MR. CIRILANO: Did you need him to  
5 repeat any of those?

6 THE COURT REPORTER: No.

7 Q. Let me ask you first: How did you  
8 come up with this list?

9 A. A lot of it is by memory, and, of  
10 course, I also have a BIW book that lists new  
11 ships. And I also had a book that lists all  
12 ships. I don't have it anymore.

13 Q. Okay. You looked through a list of  
14 ships and those that rang a bell to you, you --

15 A. I went through what I had for what I  
16 kept for information.

17 Q. Okay.

18 A. That's overhaul. That's only up until  
19 '72.

20 Q. We'll talk about -- I know you went  
21 back to Bath Iron Works a couple of times  
22 anyway, and we'll talk about it in chronology.

23 A. Okay.

24 Q. Okay. Your first job at BIW when you



Merle West

Volume 1

November 27, 2018

53

1 began in '67 was a boilermaker; is that right?

2 A. That's what they started me off as.

3 Q. How long did you perform the job of  
4 boilermaker roughly?

5 A. I think it was in the area of about  
6 maybe six months. It was two months, at least.  
7 I'm thinking more like six months.

8 Q. Okay. What type of work were you  
9 doing as a boilermaker for BIW?

10 A. Assembling new boilers in the boiler  
11 shop and as well as on board ship.

12 Q. Okay.

13 A. You put these together in increments.

14 Q. Do you know how many boilers you would  
15 have built during that time? That's five?

16 A. Probably I worked on four boilers.

17 Q. Do you know the name of any of the  
18 ships where you built the boiler that was  
19 installed, any of those ships where you recall  
20 actually building and installing that boiler?

21 A. I believe it was the first two German  
22 ships, the Lutjens and the Molders.

23 Q. Now, do you know the manufacturer of  
24 the boilers that you were constructing or

Merle West

Volume 1

November 27, 2018

56

1       whereas if you worked in a paper factory, paper  
2       mill you didn't do much machining.

3           Q.   Got you.  Now, did you stay employed  
4       as an outside machinist until you left Bath  
5       that first time in 1972?

6           A.   Repeat.

7           Q.   Once you became an outside machinist,  
8       did you stay as an outside machinist until you  
9       left there in '72?

10          A.   Yes.

11          Q.   What type of work would you perform as  
12       an outside machinist for BIW initially?  We'll  
13       talk about the new construction on those German  
14       destroyers, I guess, and then on the container  
15       ships that were overhauled.  So let me ask you  
16       first:  The Lutjens, the Molders, the Rommel  
17       the, Seawitch, the Lightning and the Stag  
18       Hound, those are all new construction?

19          A.   Right.

20          Q.   The remainder of the ships on that  
21       list are overhaul?

22          A.   Right.

23          Q.   Now, let me see if I can short-circuit  
24       a little bit of the information that you're

Merle West

Volume 1

November 27, 2018

126

1 Q. In order --

2 A. If things got real bad, you could use  
3 equal to or better than material-wise, but they  
4 didn't like to do that.

5 Q. In your experience as an outside  
6 machinist, most of the packing --

7 A. You couldn't buy that stuff unless you  
8 went to the tech manual, and you could only buy  
9 what was given you information from the  
10 manufacturer.

11 Q. Okay.

12 A. They quite often -- they didn't even  
13 give you the sizes of the material. Like  
14 packing, they say 3/8 square, inch and a half  
15 ID, 2-inch OD or something. They didn't do  
16 that. They wouldn't give you -- they just say  
17 packing, and that's what you got, packing. And  
18 that packing was specifically for that pump.  
19 So that may have been changed, but it was the  
20 same packing supplied by the same company.

21 Q. Got you. I think you told me that  
22 wasn't absolutely true with respect to valves?

23 A. Not always, especially smaller valves,  
24 lesser valves.

Merle West

Volume 1

November 27, 2018

130

1 Q. Yes.

2 A. -- it created a lot of dust, and we  
3 were never supplied any respirators or  
4 anything, no safety devices, nothing.

5 Q. Understood. Now, you stopped working  
6 at Bath Iron Works this first time on, I  
7 believe, June 2, '72. Does that sound about  
8 right?

9 A. Yes.

10 Q. Okay. And then I think you began to  
11 work as a carpenter for a gentleman by the name  
12 of Myron Long; is that right?

13 A. Yes. He worked at SUPSHIP. He was  
14 also an Alna resident and friend.

15 Q. How long did you work for Mr. Long?

16 A. About a year and a month.

17 Q. Okay. Why did you stop working for  
18 Mr. Long?

19 A. I had a motorcycle accident.

20 Q. Was that work with him mostly  
21 commercial or residential or both?

22 A. Residential.

23 Q. What kind of -- did you do -- what  
24 kind of work did you do for Mr. Long?

Merle West

Volume 1

November 27, 2018

131

1 A. Just about every phase.

2 Q. All carpentry?

3 A. I even laid cement block for him for  
4 cellars, everything.

5 Q. Do you think you were exposed to any  
6 asbestos working as carpenter for Mr. Long?

7 A. It would be very little, I would  
8 think. Some sheetrock, working with mortar.

9 Q. Okay. Now, after your employment with  
10 Mr. Long ended, you went back to work for BIW;  
11 is that correct?

12 A. I did that winter for recuperation.

13 Q. Okay. And I think that the BIW  
14 records indicate that you went back on 9/24/73;  
15 is that right?

16 A. It sounds right.

17 Q. I think you stayed until 5/17 of '74  
18 if the records are accurate. Does that sound  
19 about right?

20 A. It does.

21 Q. Now, during that time I think you told  
22 me that you were doing planning and scheduling?

23 A. Yes.

24 Q. What is planning and scheduling? What

Merle West

Volume 1

November 27, 2018

136

1 Q. Now, you leave BIW in May of '74.  
2 Were you laid off, I understand; is that right?

3 A. Yes.

4 Q. And is that when you went to build  
5 your home?

6 A. Yes.

7 Q. Okay. So in the fall of '74, you're  
8 building your home. Are you also working for a  
9 gentleman by the name of Pete Pratt?

10 A. He came to my house and wanted to hire  
11 me.

12 Q. Okay. He saw you building your house.

13 A. Yes. Well, he was a contractor  
14 working in the area, and he knew of me.

15 Q. Did you go to work would for him?

16 A. Yes.

17 Q. I think you worked for him until  
18 spring or so of '76?

19 A. Two winters, I think.

20 Q. I'm sorry?

21 A. I think I worked through two winters.  
22 That would have been about right.

23 Q. Okay. Is this commercial or  
24 residential or both?

Merle West

Volume 1

November 27, 2018

147

1 Q. Okay. You eventually go back to Bath  
2 Iron Works in 1978, true?

3 A. Yes.

4 Q. And how many homes do you think you  
5 built prior to returning to Bath in '78?

6 A. In those couple of years?

7 Q. Yes.

8 A. Three.

9 Q. Do you think you --

10 A. Anyways.

11 Q. Did you work with any  
12 asbestos-containing products building those  
13 homes?

14 A. Not knowingly.

15 Q. Okay. Let's go back to -- let's talk  
16 about your work at BIW. According to your  
17 records there, you get back on 1/11/78. Does  
18 that sound about right?

19 A. Yes.

20 Q. And then you work during that stint  
21 until 2/8/88. Does that sound about right?

22 A. Exactly.

23 Q. Okay. When you returned to work in  
24 '78, are you returning to work at BIW as an

Merle West

Volume 1

November 27, 2018

152

1           A. The Brown, the Maui which was a new  
2 ship, a Danish ship. All these are overhaul.  
3 The Capodanno, the Cannole, the Pharris, Sims,  
4 Conyngham the Trippe, Vreeland, McDonnell,  
5 Brumby, Page, King, Paul, Patterson,  
6 Montgomery, Capodanno, and the Page.

7           Q. Okay. These ships but for the Maui  
8 were overhaul?

9           A. Yes.

10          Q. Okay. Did you work on any turbines as  
11 an outside machinist during this period? Let  
12 me ask a simpler way. For a period of time  
13 starting in '78, you were back as an outside  
14 machinist; is that right?

15          A. Right.

16          Q. Would your work as an outside  
17 machinist during this '78 to '88 time period be  
18 any different than it was -- and you've  
19 explained to us what an outside machinist does  
20 from that '67 to '72 time period -- or was the  
21 job pretty much the same?

22          A. The first nine months of this I worked  
23 the same.

24          Q. Okay. And then as you become your



Merle West

Volume 1

November 27, 2018

154

1       when you're an outside machinist, the turbine  
2       work that you described previously, same type  
3       of work going on?

4             A.    The first nine months was same type.

5             Q.    How about that first nine months  
6       boiler, same work as an outside machinist on  
7       boilers during this nine-month period as it was  
8       when you --

9             A.    Same.

10            Q.    Okay. Were the manufacturers of the  
11       turbines during this '78 time period the same  
12       as those during the '67 to '72 time period?

13            DEFENSE COUNSEL:  Objection.  Form.

14            A.    Same.

15            Q.    Okay. You told us before about how  
16       your work on pumps and valves brought you in  
17       contact with gaskets and packing on pumps and  
18       pumps and valves. Does that same hold true for  
19       this nine months as an outside machinist  
20       beginning in '78?

21            DEFENSE COUNSEL:  Objection.  Form.

22            A.    Yes.

23            Q.    Were the manufacturers of the pumps  
24       and valves during this stint the same as the

Merle West

Volume 1

November 27, 2018

156

1 Q. Okay. A lot of overtime?

2 A. There was a lot of overtime.

3 Q. Now, so you're aboard the ship.

4 You're in the shop, and is this the same shop  
5 we were talking about before?

6 A. Machine shop.

7 Q. Okay. And you're in the office.  
8 Where is your office located at this time?

9 A. It was across the train tracks.

10 Q. Okay.

11 A. Just tracks that ran up -- it was a  
12 cross in an office building on the other side.  
13 It was close by.

14 Q. Now, on an average day I know you  
15 worked overtime so we're talking about more  
16 than an eight-hour day, but whatever the amount  
17 of hours during a typical day, how would it  
18 break down between office, aboard whatever  
19 vessel is being overhauled and in the shop?  
20 How many --

21 A. Well, some days I'd be down the shop  
22 almost all day. Then the next day I'd be up in  
23 the office almost all day writing it up and  
24 doing research. So I would say probably in the

Merle West

Volume 1

November 27, 2018

165

1 Q. Right.

2 A. Especially the turbines because that  
3 was my -- I was the only one that handled them,  
4 the main propulsion.

5 Q. Would you have worked -- would you  
6 have supervised the work being done on boilers?

7 A. No.

8 Q. Okay.

9 A. We had another person that took care  
10 of that.

11 Q. Okay. Would you be in the fireroom  
12 when boilers were being overhauled?

13 A. Oh, yes, because a lot of the  
14 equipment, the pumps and stuff like that was in  
15 the fireroom as well.

16 Q. Okay. Your job was to oversee the  
17 work being done on pumps and valves?

18 A. Pumps and valves and anything  
19 mechanical and also like I say, I did a lot of  
20 main steampiping.

21 Q. Okay.

22 A. Level one.

23 Q. Okay. I'm going to move on from BIW  
24 to your work for Cianbro, okay. And I believe

Merle West

Volume 1

November 27, 2018

166

1 that you began to work for Cianbro in roughly  
2 1988 or so?

3 A. Yes.

4 Q. What is Cianbro? First of all, who  
5 are they?

6 A. It's -- they're mostly a general  
7 construction company. They happen to be  
8 building bridges. They have to be going in as  
9 a subcontractor to a nuclear station like Maine  
10 Yankee. They built bridges here in Portland.

11 Q. And you worked for them?

12 A. They work a lot in paper mills.

13 Q. Okay.

14 A. About any kind of construction job  
15 they'd take.

16 Q. Okay.

17 A. And they're based out of Pittsfield,  
18 Maine.

19 Q. Now, you worked for them as a  
20 millwright?

21 A. Yes.

22 Q. Okay. And I think you worked from '88  
23 until about '95. Does that sound about right?

24 A. Yes. And they're nonunion so just

Merle West

Volume 1

November 27, 2018

211

1 mill in the state of New York?

2 A. Yes.

3 Q. Do you know where in New York that was  
4 located?

5 A. Ticonderoga.

6 Q. Do you know the name of that?

7 A. IP.

8 Q. That stands for?

9 A. International Paper.

10 Q. How many times did you work there?

11 A. Once.

12 Q. Do you know what you did there?

13 A. Boiler work.

14 Q. How long did that job last, any idea  
15 roughly?

16 A. Four days, give or take.

17 Q. Okay. Do you recall what you were  
18 doing on the boiler?

19 A. Freeing up doors.

20 Q. Okay.

21 A. On the bottom.

22 Q. Did that work expose you to any  
23 asbestos-containing products?

24 A. Working in it all the time.

Merle West

Volume 1

November 27, 2018

213

1 A. It's burning garbage dump, I guess.

2 Q. Power station?

3 A. Yeah, it's a power station. It runs  
4 like a -- runs one turbine and one generator.

5 Q. What were you doing there for Cianbro?

6 A. There was one huge pump that we were  
7 working on.

8 Q. Do you know who made that pump?

9 A. Aurora.

10 Q. Aurora. What type of work were you  
11 doing on the Aurora Pump at this Merrimack  
12 Waste Recovery in Massachusetts?

13 A. Bearings and packing.

14 Q. Okay. Is this the same type of  
15 packing that you were describing for us  
16 previously that you would be using on pumps?

17 A. Except it was big.

18 Q. Okay. Much bigger.

19 Do you know who manufactured the  
20 packing that was used on the Aurora Pump?

21 A. That was John Crane, I'm pretty sure.

22 Q. Okay.

23 A. Because we received that in a big John  
24 Crane box.

Merle West

Volume 1

November 27, 2018

216

1 jobsite? Did that overlap?

2 A. Such as Maine Yankee, yes.

3 Q. I'm asking you that Maine Yankee was  
4 one?

5 A. Yes, such as.

6 Q. Do you recall who you were working for  
7 at Maine Yankee?

8 A. Local 1996.

9 Q. Okay. We're going to get to that.

10 A. I was working for the union which  
11 would be probably Burns and Roe at the time.

12 Q. Okay. I guess when we start talking  
13 about the Local 1996 work we'll get to that, so  
14 I'll reserve that question for a little bit  
15 later okay.

16 A. All right.

17 Q. Now, the rest of the jobs that we're  
18 going to talk about concern when you were a  
19 member of Local 1996. What trades were  
20 represented by Local 1996?

21 A. Carpenters and millwrights.

22 Q. And did you work for 1996 as a  
23 carpenter, a millwright or both?

24 A. Both.

Merle West

Volume 1

November 27, 2018

235

1 to go off the record again to change the tape.

2 (Recess 2:59 p.m. to 2:59 p.m.)

3 THE VIDEOGRAPHER: On the record.

4 Q. I think the next one we were going to  
5 talk about is Sappi paper mill in Westbrook for  
6 one day, 7/23/98. And I think you told me you  
7 weren't sure about what that job was all about  
8 anymore. Still hasn't come to you?

9 A. Had to be a very minor job.

10 Q. Okay. There's an entry for Seabrook,  
11 New Hampshire is the next one, 8/17/98 to  
12 8/19/98. Do you recall what facility that  
13 might have been in Seabrook?

14 A. That's the first time Seabrook's come  
15 up, right?

16 Q. I think so.

17 A. Went down there, got some training.  
18 And they deleted the job. I was down there for  
19 two days for training, and they did not do the  
20 job.

21 Q. Okay. No exposure, I take it?

22 A. No exposure, just training.

23 Q. Next job I have is a Holt Hall in  
24 Portland, 8/24/98 to 9/11/98. Do you think you



VOLUME 2  
PAGES: 280-629  
EXHIBITS: None

STATE OF RHODE ISLAND

PROVIDENCE, SS.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
NO. 18-6293

\*\*\*\*\*

MERLE C. WEST and JANICE E. \*  
BRADFORD WEST, \*  
Plaintiffs, \*

vs. \*

AIR & LIQUID SYSTEMS CORPORATION, \*  
et al, \*  
Defendants. \*

\*\*\*\*\*

CONTINUED EVIDENTIARY AUDIOVISUAL DEPOSITION  
OF MERLE C. WEST  
Wednesday, November 28, 2018  
Residence Inn by Marriott  
139 Richardson Street  
Bath, Maine

Darlene Caiazzo Sousa, CSR, LCR NH #139, RPR  
EPPLEY COURT REPORTING, LLC  
Post Office Box 382  
Hopedale, Massachusetts 01747  
508.478.9795 508.478.0595 (Fax)  
www.eppleycourtreporting.com

Merle West

Volume 2

November 28, 2018

304

1 up because there like little knobs on the side,  
2 so they would fit up against the bracket.

3 Q. Like little burrs?

4 A. Yeah. You take a file and just clean  
5 them off.

6 Q. Do you have any way to estimate how  
7 often it was you had to do that?

8 A. Usually every time you put them on.

9 Q. Okay. How long would that take per  
10 lining, a few seconds?

11 A. A minute just to run the file across  
12 and get those burrs off.

13 Q. Do you have any knowledge as to  
14 whether or not your uncle's junkyard is still  
15 in existence even if it's owned by somebody  
16 else?

17 A. No. He pretty much closed it around  
18 '78.

19 Q. Okay. What town was it located in?

20 A. 1978 was when he closed it.

21 Q. What town was that again?

22 A. Wiscasset.

23 Q. And do you know whether or not the  
24 barn is still standing or not?

Merle West

Volume 2

November 28, 2018

341

1 a lot of questions that I otherwise would have  
2 covered. So I want to kind of skip around  
3 starting first with the work at the junkyard,  
4 okay? You were there, you said, starting in  
5 around 1964 or '65. Were you still in high  
6 school at that time, or had you graduated?

7 A. High school.

8 Q. Okay. Did you graduate from high  
9 school?

10 A. '66.

11 Q. Okay. And what high school did you  
12 graduate from?

13 A. Wiscasset.

14 Q. While you -- when you started at the  
15 junkyard in '64 or '65, you were still a  
16 student, true?

17 A. Yes.

18 Q. And then you started at Bath Iron  
19 Works for your first stint on October 16, 1967;  
20 is that accurate?

21 A. Sounds right.

22 Q. Okay. And when you started at Bath  
23 Iron Works in 1967, you are working there  
24 full-time; is that true?

Merle West

Volume 2

November 28, 2018

342

1 A. Yes.

2 Q. Okay. So did there come a point once  
3 you started at Bath Iron Works where you worked  
4 fewer hours at the junkyard because you were  
5 full-time at Bath?

6 A. I worked -- no, I don't think so  
7 because I worked the weekends and after work  
8 and stuff at the junkyard.

9 Q. Okay.

10 A. Like I say, it was my uncle's  
11 business, and it was like being home at the  
12 family.

13 Q. Did you have regular hours, or did you  
14 just go in as on an as-needed basis?

15 A. I went in as needed or when I wanted  
16 to, either way.

17 Q. Were there times when you would go in,  
18 and there was no work for you to do?

19 A. There was always work. Yes, always  
20 work.

21 Q. So there were times when you would go  
22 on your own, and then there were times  
23 when your uncle would call you and tell you he  
24 needed you for a job?

Merle West

Volume 2

November 28, 2018

373

1 home, would you have done that brake job  
2 outside?

3 A. Outside.

4 Q. Where were you living at that time in  
5 the '66 to '71 time frame?

6 A. Wiscasset.

7 Q. Were you living at home?

8 A. Rummerill Road.

9 Q. When you and your wife were married in  
10 1967, where did you live?

11 A. Rummerill Road.

12 Q. She lived --

13 A. Wiscasset.

14 Q. Did she live with you at your family  
15 home?

16 A. No, I had a place of my own.

17 Q. Okay.

18 A. Yeah. We had a place of our own.

19 Q. On the same property?

20 A. Yes.

21 Q. Just so I understand, how long did you  
22 live there with your wife, your first wife?

23 A. I lived in Wiscasset until about 1972,  
24 and then I moved to Alna where I am now.

Merle West

Volume 2

November 28, 2018

374

1 Q. You were on Rummerill --

2 A. Road.

3 Q. -- Road?

4 A. Close enough.

5 Q. -- until 1972, and then you moved to

6 Alna?

7 A. Yes.

8 Q. You mentioned the 1969 Dodge Charger,  
9 and you already testified about the work you  
10 did on that vehicle when Attorney Sugarman was  
11 asking you questions. And is it your testimony  
12 that you went to the NAPA store that Karl  
13 Pearson owned for that?

14 A. I believe, if my memory serves me  
15 right where I bought material for that car. I  
16 did a lot of work to it.

17 Q. The only other one that I have is the  
18 '79 Chevy half-ton, and you described that  
19 brake work just a short while ago. And you  
20 believe that you purchased the replacement  
21 brakes for that vehicle from NAPA?

22 A. Yeah. Those were first-time  
23 replacements.

24 Q. Okay.

Merle West

Volume 2

November 28, 2018

397

1 been totally enclosed, but they was in some  
2 sort of a wooden structure.

3 Q. What was in a wooden structure?

4 A. The valves.

5 Q. Let's turn to gaskets. The gaskets  
6 that were used in the shipyard were placed in a  
7 warehouse and unboxed before they went to the  
8 stockroom at Bath Iron Works; isn't that true?

9 A. I don't know.

10 Q. How about the pipecovering? The  
11 pipecovering in the stockroom was unboxed;  
12 isn't that correct?

13 A. I didn't work there. I don't know.

14 Q. Did you ever see any boxes of  
15 pipecovering aboard a ship while you worked at  
16 Bath Iron Works between 1967 and 1972?

17 A. Yes. Cardboard boxes.

18 Q. Did you ever see a warning stamped on  
19 the box indicating that the product contained  
20 asbestos. It could -- and want you to avoid  
21 breathing the dust, and if it could not be  
22 avoided, wear a mask approved by the Bureau of  
23 Mines?

24 A. I don't recall seeing any warnings of

Merle West

Volume 2

November 28, 2018

446

1 Q. Right.

2 A. You call that maintaining.

3 Q. And you talked about that in some  
4 detail yesterday, right?

5 A. Uh-huh.

6 Q. Was most of your work as an outside  
7 machinist in that 1967 to 1972, right, that was  
8 when you were an outside machinist, '67 to '72?

9 A. Yes.

10 Q. Was most of your work as an outside  
11 machinist in that time frame, was it repairing  
12 and maintaining the equipment, or was it  
13 installing and removing the equipment?

14 A. It depends on the time frame. At the  
15 beginning it was installing because I was  
16 working on new ships.

17 Q. Right.

18 A. And then as I got going I went on to a  
19 container ship for a year, and then I went on  
20 to overhaul which was repairing.

21 Q. Got it. And in that '67 to '72 time  
22 frame, when did that shift from the kind of new  
23 construction installing duty to more of a  
24 maintenance or repair duty?



Merle West

Volume 2

November 28, 2018

451

1 to do what -- we installed our own equipment.

2 Q. And when you were doing welding as you  
3 just described, were you using welding gloves  
4 specifically for welding?

5 A. Some were welding gloves, and we used  
6 the asbestos gloves as well.

7 Q. Okay.

8 A. The asbestos gloves were usually more  
9 handy because we kept those in our tool boxes  
10 as a rule because we used them so much.

11 Q. Yesterday you talked about mittens,  
12 asbestos mittens. Would you use asbestos  
13 mittens for welding?

14 A. If they was in the toolbox, that's  
15 what you used rather than trying to chase down  
16 welding gloves. Everything at BIW was if you  
17 could find it, you steel it, you got it. But  
18 otherwise you didn't have it, so you kept stuff  
19 in your toolbox locked up.

20 Q. Of the overall work you did as an  
21 outside machinist at Bath Iron Works between  
22 1967 and 1972, how much -- what percentage of  
23 your work required you to use heat-protective  
24 gloves?

Merle West

Volume 2

November 28, 2018

452

1           A. Somewhere between 35, 40 percent  
2 because of the repairs you was doing so many  
3 bearing replacements and things like that as  
4 compared to new.

5           Q. So is it also -- would you say then  
6 the same percentage of your work in that time  
7 period were the hot jobs that you've talked  
8 about yesterday a little bit?

9           A. Yeah. Yes.

10          Q. Now, even for a hot job, would you  
11 agree with me that you would only be wearing  
12 any kind of heat-resistant or heat-protective  
13 mittens for part of that job?

14          A. I'm not sure I catch the drift.

15          Q. Well, you gave an example yesterday of  
16 replacing bearings, and you started talking a  
17 little bit about that today. From the  
18 beginning to the end of the job of replacing  
19 bearings, are you wearing protective gloves the  
20 entire time from the beginning of that job to  
21 the end of that job, or are you putting the  
22 gloves on?

23          A. On and off, on and off.

24          Q. On and off?

Merle West

Volume 2

November 28, 2018

579

1 roadmap, I'm going to ask you some general  
2 questions about Cianbro and work with the union  
3 and then specifically walk through the visits  
4 you made to the International Paper facility in  
5 Jay, Maine, and also one in Ticonderoga, New  
6 York.

7 A. Okay.

8 Q. At Cianbro did you have any sort of a  
9 permanent supervisor, or did it just depend on  
10 whatever the job was there was a foreman or  
11 supervisor on-site from Cianbro?

12 A. Ed Jay was -- I worked both Cianbro  
13 and union, Ed Jay.

14 Q. For the work at Jay with Cianbro, did  
15 you have a foreman on-site from Cianbro?

16 A. Yes.

17 Q. Okay. Was that the general way that  
18 Cianbro worked? You would have a foreman  
19 on-site from Cianbro at the jobs?

20 A. Yes. And Jay people coordinated with  
21 the foreman of Cianbro on what the work they  
22 wanted done.

23 Q. So --

24 A. With me working for Cianbro, I dealt

Merle West

Volume 2

November 28, 2018

587

1 wouldn't supply the safety equipment. So  
2 that's how that works.

3 Q. That's -- you're referring to your  
4 experience at Maine Yankee?

5 A. Yes. Working for Cianbro.

6 Q. I'll move on to the specific site  
7 visits. So I'm going to start with  
8 Ticonderoga. You mentioned -- you testified  
9 yesterday that you went to Ticonderoga one  
10 time, correct?

11 A. One.

12 Q. Do you recall anything about the plant  
13 there, anything that stuck out in your mind  
14 about the plant at Ticonderoga?

15 A. It was on the water, big plant.

16 Q. It was on the river?

17 A. Champlain.

18 Q. Do you know what season it was when  
19 you were there? I only ask because I don't see  
20 anything about when it was.

21 A. I'm thinking around June. It's got to  
22 be on here.

23 MR. CIRILANO: Is this for 1996 you're  
24 asking, Joel, or is this --

Merle West

Volume 2

November 28, 2018

627

1 A. I do not know.

2 Q. Okay. Last questions. These are on a  
3 totally different topic. Have you ever lived  
4 in Rhode Island?

5 A. I have stayed in Rhode Island but not  
6 lived there.

7 Q. Okay. Have you ever paid taxes in  
8 Rhode Island?

9 A. In Rhode Island?

10 Q. Not sales tax, but --

11 A. I don't even belong to mafia.

12 Q. Have you ever -- have you received any  
13 of your medical treatment in Rhode Island?

14 A. Just for my daughter.

15 Q. Understood. Have you ever done work  
16 in Rhode Island?

17 A. No.

18 Q. Not for your daughter?

19 A. No.

20 Q. All right.

21 MR. FYKE: I may have some cleanup  
22 questions, but for now that's all I have.

23 Thank you for your time.

24 THE WITNESS: Okay.

VOLUME 3  
PAGES: 630-972  
EXHIBITS: 9-16

STATE OF RHODE ISLAND

PROVIDENCE, SS.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
NO. 18-6293

\*\*\*\*\*

MERLE C. WEST and JANICE E. \*  
BRADFORD WEST, \*  
Plaintiffs, \*

vs. \*

AIR & LIQUID SYSTEMS CORPORATION, \*  
et al, \*  
Defendants. \*

\*\*\*\*\*

CONTINUED EVIDENTIARY AUDIOVISUAL DEPOSITION  
OF MERLE C. WEST  
Thursday, November 29, 2018  
Residence Inn by Marriott  
139 Richardson Street  
Bath, Maine

Darlene Caiazzo Sousa, CSR, LCR NH #139, RPR  
EPPLEY COURT REPORTING, LLC  
Post Office Box 382  
Hopedale, Massachusetts 01747  
508.478.9795 508.478.0595 (Fax)  
www.eppleycourtreporting.com

Merle West

Volume 3

November 29, 2018

656

1 Q. And during those two weeks, you were  
2 primarily working around the number 10 paper  
3 machine; am I understanding that correctly?

4 A. Yes.

5 Q. Same question for that location that I  
6 have for Bath Iron Works, the pipe insulation  
7 at that location, right now do you recall the  
8 manufacturer of it?

9 A. No.

10 Q. Moving on to Maine Yankee, I know you  
11 worked there multiple times, but right now I'm  
12 just going to focus on your time at Maine  
13 Yankee when you were employed by Cianbro from  
14 '88 to '95. My recollection is that you worked  
15 there six different times within that time  
16 period?

17 A. That's approximate.

18 Q. Okay.

19 A. But sometimes I'd be there for a week  
20 or two weeks, and sometimes I'd be there for  
21 two or three months.

22 Q. Okay. And that was going to be my  
23 next question, if you could recall the specific  
24 amount of time you were there for each of those

Merle West

Volume 3

November 29, 2018

657

1 approximately six times?

2 A. I'd probably can give you a good idea  
3 if I went down this piece by piece but...

4 Q. Some of them were about one week, and  
5 others may have been longer, two or three  
6 months?

7 A. It would come -- it would amount up to  
8 probably over a year, over 2,000 hours.

9 Q. I think you said on the first day of  
10 your deposition that Maine Yankee was  
11 constructed in around 1970 or 1971?

12 A. I think that's about when it was  
13 completed.

14 Q. And so the first time you worked there  
15 was about 18 years later, right, if we're  
16 talking '88?

17 A. Sounds right.

18 Q. Okay. So are you able to -- the  
19 insulation on the pipes at Maine Yankee, you  
20 can't tell me when that insulation was  
21 installed on those pipes, correct?

22 A. It had to be installed at that time  
23 frame when they completed it on operation.

24 Q. When you say "at that time frame,"



Merle West

Volume 3

November 29, 2018

664

1 building.

2 Q. Okay.

3 A. Mostly going to school in the office  
4 building, gone through security. They also had  
5 a place up there for showers, if you got  
6 contaminated down in the plant.

7 Q. I'm going to try to put all the other  
8 jobsites together and ask these questions. And  
9 if we can't do it that way, then I'll break it  
10 up by jobsite just to short-circuit this. So  
11 including jobsites that you worked at while you  
12 were at Cianbro, so International Paper at Jay,  
13 the Otis mill, Georgia-Pacific, then I'm also  
14 going to add in wherever you worked during your  
15 union job including at Madison Paper and  
16 Seabrook. For any location that you worked at  
17 in your career, do you know the manufacturer of  
18 the pipe insulation?

19 A. No.

20 Q. And yesterday you testified that you  
21 recalled the names Johns Manville and Kaylo; is  
22 that correct?

23 A. That's the two of them, yes.

24 Q. Okay. And you said that's two of

VOLUME 4  
PAGES: 973-1186  
EXHIBITS: 17-18G

## STATE OF RHODE ISLAND

PROVIDENCE, SS. SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
NO. 18-6293

\*\*\*\*\*  
MERLE C. WEST and JANICE E. \*  
BRADFORD WEST, \*  
Plaintiffs, \*  
\*  
vs. \*  
\*  
AIR & LIQUID SYSTEMS CORPORATION, \*  
et al, \*  
Defendants. \*  
\*\*\*\*\*

CONTINUED EVIDENTIARY AUDIOVISUAL DEPOSITION  
OF MERLE C. WEST  
Friday, November 30, 2018  
Residence Inn by Marriott  
139 Richardson Street  
Bath, Maine

Darlene Caiazzo Sousa, CSR, LCR NH #139, RPR  
EPPLEY COURT REPORTING, LLC  
Post Office Box 382  
Hopedale, Massachusetts 01747  
508.478.9795 508.478.0595 (Fax)  
www.eppleycourtreporting.com

Merle West

Volume 4

November 30, 2018

1077

1 were employed by Cianbro, you worked at an S.D.  
2 Warren paper mill in Westbrook; is that right?

3 A. Yes.

4 Q. Okay. And then later when you were  
5 employed by the union, you worked at a Sappi  
6 paper mill in Westbrook; is that right?

7 A. The same mill, yes.

8 Q. That was my next question. Those were  
9 one and the same, right?

10 A. Yes.

11 Q. Okay. And at that mill, same question  
12 as before, you were hired by a contractor who  
13 was hired by the paper mill owner, correct?

14 A. Same sequence.

15 Q. And as your employer, the contractor  
16 would pay you; is that right?

17 A. Yes.

18 Q. And you'd never received a paycheck  
19 from the owner of the paper mill itself, right?

20 A. Right.

21 Q. Okay. Did you have a foreman at the  
22 Westbrook mill?

23 A. Certainly.

24 Q. And he would have been employed by the

# **EXHIBIT C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

MERLE C. WEST and	)	CIVIL ACTION NO.:
JANICE E. BRADFORD WEST	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AIR & LIQUID SYSTEMS	)	
CORPORATION, et al.	)	
	)	
Defendants.	)	
_____	)	

**NOTICE OF REMOVAL**

**TO THE CHIEF JUDGE AND JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND:**

Pursuant to 28 U.S.C. §§ 1441, 1442(a)(1), and 1446(b)(3), Defendant General Electric Company (“GE”), by and through undersigned counsel, hereby removes the above-captioned civil action which was filed in the Providence County Superior Court, State of Rhode Island, Civil Action PC 18-6293, to the United States District Court for the District of Rhode Island and gives notice of such removal. In support thereof, GE offers the following:

**I. INTRODUCTION**

1. Plaintiff Merle C. West and Janice E. Bradford West, filed this lawsuit on September 5, 2018, entitled Merle C. West and Janice E. Bradford West, Case No. 18-6293, against GE, and numerous other defendants in the Superior Court of Rhode Island, Providence County. *See* Complaint attached hereto as Exhibit A.
2. GE was served with the Complaint on or about September 7, 2018. *See* Summons and Proofs of Service, attached hereto as Exhibit B and Exhibit C.

3. In the Complaint, Plaintiffs allege that Merle C. West was exposed to asbestos-containing products through, inter alia, his work at the Bath Iron Works shipyard in Maine. Exhibit A, ¶ 2. Plaintiffs did not identify or reference products that allegedly exposed Merle C. West to asbestos in the Complaint. *See* Exhibit A.
4. This action may be removed to this court pursuant to 28 U.S.C. § 1441(a), which allows a defendant or defendants to remove any civil action brought in a state court over which the District Courts of the United States have original jurisdiction, to the District of the United States for the district and division embracing the place where such action is pending.
5. Removal is timely under 28 U.S.C. § 1446(b)(3). This Notice of Removal is filed within thirty (30) days of Plaintiffs' service of supplemental discovery responses and exhibits on November 20, 2018, which for the first time, specifically identified the U.S. Navy ships that he alleges exposed him to asbestos during his employment at Bath Iron Works and establishes the federal contractor defense. GE designed, manufactured, and supplied turbines and related propulsion and power generation equipment to the U.S. Navy for use aboard navy ships and nuclear submarines. Each of these turbines was custom- designed and manufactured in accordance with detailed specifications and/or regulations promulgated or adopted by the Navy and its officers, and each relevant aspect of the turbine's design and manufacture was subject to detailed and ongoing direction and control by the Navy through its individual officers.
6. It was not until Plaintiffs' service of his supplemental discovery responses and exhibits which were filed on November 20, 2018 that it first became ascertained to GE that the case was removable.

## II. GROUNDS FOR REMOVAL

7. Pursuant to §1442(a)(1), removal is appropriate where the moving party can (1) demonstrate that it acted under the direction for a federal office, (2) raise a colorable federal defense to plaintiff's claim, and (3) demonstrate a casual nexus between plaintiff's claims and acts it performed under color of federal office. See Mesa v. California, 489 U.S. 121, 124-25, 129-31, 134-35 (1989)
8. The basis for this removal is that this action involves a person, *i.e.*, GE, who- in relation to the claims being stated against it and as summarized herein- acted under the authority, direction and control of an officer or agency of the United States for purposes of 28 U.S.C. §1442(a)(1) and who can state at least a colorable federal law-based "governmental contractor" defense to those claims. See Mesa v. California, 489 U.S. 121, 124-25, 129-31, 134-35 (1989)
9. The Notice of Removal is filed within thirty (30) days after receipt by the GE of Plaintiffs' supplemental interrogatory responses and exhibits which established the federal contractor defense. 28 U.S.C. §§ 1446(b)(3); 1442(a)(1).
10. Plaintiffs are alleging asbestos exposure from the products GE supplied to the U.S. Navy for use on U.S. Navy ships and/or nuclear submarines. In the manufacture and sale of turbines and associated equipment for the U.S. Navy, including all aspects of warning associated with those turbines and equipment, GE was acting under and at the direction of the U.S. Navy. GE designed, manufactured, and supplied turbines and other equipment at issue in this case to the U.S. Navy in accordance with precise, detailed, specifications promulgated by the U.S. Navy. Turbines were subject to various test and trials supervised

by the Navy before they were approved for use on military vessels. All relevant aspects of the design and manufacture of the turbines were subject to close, detailed and ongoing supervision and control of the Navy. As such GE acted under the detailed and ongoing direction and control of one or more federal officers. Federal jurisdiction exists in this case pursuant to federal contractor defense. 28 U.S.C. § 1442(a)(1).

11. Should Plaintiffs file a motion to remand this case, GE respectfully requests an opportunity to respond more fully in writing, but offers the following statement and citations to authority at this time in satisfaction of its obligation under 28 U.S.C. §1446 to provide a short and plain statement of the legal and factual basis for its removal.
12. GE has a colorable federal-law defense to this action. See Boyle v. United Technologies Corp., 487 U.S. 500, 504 (1988) (holding government contractors have immunity from liability for injuries arising from any exposure to asbestos related equipment on board Navy vessels, insofar as they were constructed or repaired by the contractor); In re Joint E. and S.D.N.Y. Asbestos Litigation (“Grispo”), 897 F.2d 626, 630 (2d Cir. 1990) (recognizing applicability of government contractor defense in failure-to-warn case); Faddish v. General Electric Co., 2010 U.S. Dist. LEXIS 112937 (E.D. Pa. October 22, 2010) (granting summary judgment to GE based upon the government contractor defense in an asbestos failure-to-warn case).
13. This situation has arisen in Shepherd v. Air & Liquid Sys. Corp., 2012 WL 5874781 (D.R.I. Nov. 20, 2012). In Shepherd, the Defendants sought removal after the Plaintiff’s discovery responses indicated that Plaintiff worked with asbestos-containing products in the boiler rooms of Naval ships. The defendants asserted that federal officer removal was appropriate because they manufactured boilers pursuant to contracts with the navy. After



removal, the plaintiff's moved to remand the case. The U.S. District Court District of Rhode Island found that removal was appropriate because the defendants established a colorable federal defense to Plaintiffs' claims and that the requirements for federal officer removal were satisfied.

### **III. ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED**

14. This Notice of Removal is being filed in the District of Rhode Island, the District Court of the United States for the district and division within which the state court action is pending as required by §§ 1441(a) and 1446(a).

15. Pursuant to 28 U.S. C. § 1446(d), a copy of the Notice of Removal and Notice of Filing of Notice of Removal will be provided to Plaintiff and filed with the Clerk of the County Superior Court of Providence, Rhode Island, in the form attached hereto and will file those documents required by Local Rule 81. See Exhibit D.

16. By filing this Notice of Removal, GE does not waive any defenses or rights that may be available to them.

17. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. §1446(a).

### **VI. CONCLUSION**

Wherefore, GE respectfully request that this action be duly removed from the Superior Court for the County of Providence to this Court, and that it proceed herein.

DEFENDANT,  
GENERAL ELECTRIC COMPANY,

Dated: December 19, 2018

/s/ Anne E. Shannon  
Anne E. Shannon  
RI Bar #9591  
MCCARTER & ENGLISH, LLP.  
265 Franklin Street  
Boston, MA 02110  
Phone: 617-449-6500

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the Rhode Island Superior Court and a copy was sent to all counsel of record via File & ServeXpress on this 19<sup>th</sup> day of December, 2018. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

Anne E. Shannon  
Anne E. Shannon

# EXHIBIT A

**STATE OF RHODE ISLAND  
PROVIDENCE, SC**

**SUPERIOR COURT**

**MERLE C. WEST and JANICE E. BRADFORD WEST,  
his wife,**

***Plaintiffs,***

**v.**

**CIVIL ACTION NO.:**

**AIR & LIQUID SYSTEMS CORPORATION,  
AURORA PUMP COMPANY,  
ARMSTRONG PUMPS, INC.,  
ALBANY INTERNATIONAL, a Corporation,  
ALLIED GLOVE CORPORATION,  
BAYER CROPSOURCE f/k/a Amchem PRODUCTS,  
BELL & GOSSETT,  
BSM PUMP CORP. formerly BROWN AND SHARPE,  
CBS CORPORATION,  
CRANE COMPANY,  
DEZURIK, INC.,  
EATON CORPORATION,  
ECR INTERNATIONAL, as successor-in-interest to Utica Boiler Company,  
FLOWERVE CORPORATION,  
FOSTER WHEELER , LLC,  
VIACOM INC.,  
GARDNER-DENVER, INC.,  
GENERAL ELECTRIC COMPANY,  
GOULD PUMPS,  
GRINNELL, LLC,  
HAMMOND VALVE COMPANY,  
HONEYWELL INTERNATIONAL, INC.,  
IMO INDUSTRIES, INC.,  
INDUSTRIAL HOLDINGS CORPORATION f/k/a Carborundum Co.,  
INGERSOLL-RAND COMPANY,  
INTERNATIONAL PAPER CO.,  
MAINE YANKEE ATOMIC POWER COMPANY,  
METROPOLITAN LIFE INSURANCE COMPANY,  
MILWAUKEE VALVE CO,  
NEW ENGLAND INSULATION, INC.,  
NEW YORKER BOILER COMPANY,  
THE WM. POWELL COMPANY,  
P.I.C. CONTRACTORS, INC.,  
PACKINGS & INSULATIONS CORPORATION,**

**RAINBIRD CORPORATION,  
KIMBERLY-CLARK CORPORATION,  
successor-in-interest to Scott Paper Company,  
WARREN PUMPS,  
PEERLESS PUMPS, INC.,  
SAPPI FINE PAPER NORTH AMERICA,  
successor-in-interest to S. D. Warren Company,  
SEARS ROEBUCK & COMPANY,  
SID HARVEY INDUSTRIES, INC.,  
Successor-in-interest to Sid Harvey of New England, Inc.,  
THE GAGE COMPANY,  
TRANE COMPANY, successor-in-interest to American Standard, Inc.,  
VELAN VALVE CORPORATION,  
F. W. WEBB COMPANY,  
WHEELER PROTECTIVE APPAREL, INC.,**

*Defendants.*

**COMPLAINT AND JURY DEMAND**

1. Plaintiffs Merle C. West and Janice E. West, his wife are individuals residing at 1098 West Alna Road, Alna, ME 04535.

2 Plaintiff Merle C. West worked as a boilermaker and machinist at Bath Iron Works from 1967 to 1972 and from 1978 to 1987; as a carpenter-millwright for Cianbro and for other contractors between 1988 and 1999 at various industrial sites.

3. Defendant Air & Liquid Systems Corporation is the successor-in-interest to Buffalo Pumps, Inc. is a Delaware corporation with its principal place of business in Albany, New York and at all relevant times it did business in the States of Rhode Island and Maine.

4. Defendant Aurora Pump Company is a North Carolina corporation with its principal place of business in Illinois and at all relevant times it did business in the State of Rhode Island and in the States of Rhode Island and Maine.

5. Defendant Armstrong Pumps, Inc. is a New York corporation with its principal place of business in the State of New York and at all times relevant did business in the States of Rhode Island and Maine.

6. Defendant Albany International, Inc. is a Delaware Corporation with its principal place of business in Albany, New York and at all times relevant did business in the States of Rhode Island and Maine.

7. Defendant Allied Glove Corporation is a Delaware corporation with its principal place of business located in Milwaukee, WI and at all times relevant did business in the State of Rhode Island and Maine.

8. Defendant Bayer Cropscience, Inc. is a Delaware corporation with its principal place of business in Pennsylvania and at all times relevant it did business in the States of Rhode Island and Maine.

9. Defendant Bell & Gossett is an Illinois corporation with its principal place of business in Morton Grove, Ill and at all times relevant did business in the States of Rhode Island and Maine.

10. Defendant BSM Pump Corp, formerly Brown and Sharpe is a Rhode Island corporation with its principal place of business located in N. Kingstown, RI and at all times relevant also did business in the State of Maine.

11. Defendant CBS Corporation, n/k/a Viacom, Inc., is a New York corporation with its principal place of business in New York and at all relevant times it did business in the States of Rhode Island and Maine.

12. Defendant Crane Co. is a New Jersey corporation with its principal place of

business in New Jersey. At all relevant times it did business in the States of Rhode Island and Maine.

13. Defendant DeZurik, Inc. is a Kansas corporation with its principal place of business located in Ellsworth, KS and at all times relevant did business in the States of Rhode Island and Maine.

14. Defendant Eaton Corporation, successor-in-interest to Cutler-Hammer, Inc. is an Ohio corporation with its principal place of business located in Cleveland, Ohio and at all times relevant did business in the States of Rhode Island and Maine.

15. Defendant ECR International is a New York corporation with its principal place of business in New York, is successor-in-interest to Utica Boiler Company and at all times relevant hereto did business in the State of Rhode Island and State of Maine.

16. Defendant Flowserve Corporation, successor-in-interest to Durametallic is a Michigan corporation with its principal place of business located in Kalamazoo, MI and at all times relevant did business in the States of Rhode Island and Maine.

17. Defendant Foster Wheeler, LLC is a New York corporation with its principal place of business located in New Jersey and at all times relevant did business in the States of Rhode island and Maine.

18. Defendant Gardner-Denver, Inc. is a Pennsylvania corporation with principal place of business located in Philadelphia, Pa. and at all times relevant did business in the States of Rhode Island and Maine.

19. Defendant General Electric Company is a New York corporation with its principal place of business in New York and at all relevant times it did business in the States of



Rhode Island and Maine.

20. Defendant Gould Pumps is a New Jersey corporation with its principal place of business in New Jersey and at all relevant times it did business in the States of Rhode Island and Maine.

21. Defendant Grinnell, LLC is a Mississippi corporation with principal place of business located in Upper Saddle River, New Jersey and at all times relevant did business in the States of Maine and Rhode Island.

22. Defendant Hammond Valve Company is a Wisconsin corporation with its principal place of business located in New Berlin, WI and at all times relevant did business in the States of Rhode Island and Maine.

23. Defendant Honeywell International, Inc. is a Delaware corporation, having its principal place of business located in Pittsburgh, Pa. and is qualified to do business in the States of Rhode Island and Maine.

24. The Defendant, IMO Industries, Inc., f/k/a IMO Delaval, Inc., f/k/a Transamerica DeLaval, Inc., f/k/a DeLaval Turbine, Inc., DeValco Corporation is a corporation incorporated under the laws of the state of New York, having its principal place of business located in New York, and at all times relevant did business in the States of Rhode Island and Maine.

25. Defendant Industrial Holdings Corp. successor-in-interest to Carborundum Company is a New York corporation with principal place of business located in New York and at all times relevant did business in the States of Rhode Island and Maine.

25. Defendant Ingersoll-Rand Co. is a New Jersey corporation with its principal place of business in New Jersey and at all relevant times it did business in the States of Rhode Island

and Maine.

26. Defendant International Paper Company is a New York corporation with its principal place of business in Memphis, TN and at all relevant times did business in the States of Rhode Island and Maine.

27. Defendant Maine Yankee Atomic Power Company is a Maine corporation with principal place of business located in Wiscasset, ME is successor-in-interest to Maine Yankee, Inc. and at all times relevant did business in the States of Maine and Rhode Island.

28. Defendant Metropolitan Life Insurance Company is a mutual life insurance company of the State of New York with its principal place of business in the State of New York and at all relevant times it did business in the States of Rhode Island and Maine.

29. Defendant Milwaukee Valve Co. is a Wisconsin corporation with principal place of business located in Madison, WI and at all times relevant did business in the States of Rhode Island and Maine.

30. Defendant New England Insulation, Inc. is a Massachusetts corporation with its principal place of business located in Canton, Massachusetts and at all times relevant did business in the State of Rhode Island and Maine.

31. Defendant New Yorker Boiler Company is a Pennsylvania corporation with its principal place of business located in Hatfield, Pa. and at all times relevant did business in the States of Maine and Rhode Island.

32. Defendant P.I.C. Contractors, Inc. is a Rhode Island corporation with its principal place of business in Rhode Island. At all relevant times it did business in the States of Rhode Island and Maine.

33. Defendant Packings and Insulations Corporation is a Rhode Island corporation

with its principal place of business in Rhode Island and at all relevant times it did business in the States of Rhode Island and Maine.

34. Defendant Rainbird Corporation is a California corporation with principal place of business located in Azusa, CA, is successor-in-interest to Hammond Valve Company and at all times relevant did business in the States of Rhode Island and Maine.

35. Defendant Kimberly-Clark Corporation is a Delaware corporation with its principal place of business located in Irving, TX and at all relevant times did business in the States of Rhode Island and Maine.

36. Defendant Peerless Pumps, Inc. is a Delaware corporation with principal place of business located in Indianapolis, IN and at all times relevant did business in the State of Rhode Island and State of Maine.

37. Defendant Sappi Fine Paper North America is the successor-in-interest to S. D. Warren Paper is a Delaware Corporation with principal place of business located in Pennsylvania and at all times relevant did business in the State of Rhode Island and State of Maine.

38. Defendant Warren Pumps is a Massachusetts corporation with its principal place of business in Massachusetts and. at all relevant times it did business in the States of Rhode Island and Maine.

39. Defendant Sears Roebuck & Company is a New York corporation with its principal place of business in Chicago, and at all times relevant did business in the State of Rhode Island and State of Maine.

40. Defendant Sid Harvey Industries, Inc., successor-in-interest to Sid Harvey of New England, Inc. is a New York corporation with its principal place of business in Garden City, NY

and at all times material relevant did business in the State of Rhode Island and Maine.

41. Defendant The Gage Company is a Pennsylvania corporation with its principal place of business located in Portland, ME and at all times relevant did business in the States of Rhode Island and Maine.

42. Defendant Trane Company, successor-in-interest to American Standard, Inc. is a Delaware corporation with principal place of business located in Michigan and at all times relevant did business in the State of Rhode Island and State of Maine.

43. The Defendant, Velan Valve Corporation, is a corporation incorporated under the laws of the State of New York, with its principal place of business located in the State of Vermont and all times relevant did business in the States of Rhode Island and Maine.

44. The Defendant F. W. Webb Company is a Massachusetts corporation with principal offices located in Bedford, MA and at all times relevant did business in the State of Maine and State of Rhode Island.

45. Defendant Wheeler Protective Apparel, Inc., is a New Hampshire corporation with principal place of business located in the State of Illinois and at all times relevant did business in the States of Rhode Island and Maine

### **COUNT I**

46. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

47. Defendants mined, processed, manufactured, designed, supplied, delivered, and sold asbestos and asbestos-containing products and/or knowingly gave substantial assistance or encouragement to those who did so, at all times relevant herein.

48. While at work, Plaintiff was caused to inhale, absorb, ingest, and come into contact with asbestos and asbestos-containing products mined, processed, manufactured, designed, supplied, delivered, and/or sold by Defendants.

49. The Defendants were negligent in that they each, jointly and severally:

a. mined, processed, manufactured, designed, supplied, delivered, and/or sold asbestos and asbestos-containing products, and/or knowingly gave substantial assistance or encouragement to those who did so, that they knew, or reasonably should have known, were dangerous, defective, poisonous, and harmful to an individual's health, body, and life;

b. failed to reasonably warn Plaintiff of the harmful effects of exposure to asbestos and asbestos-containing products and/or knowingly gave substantial assistance or encouragement to those who did so;

c. failed to provide Plaintiff with the knowledge as to possible precautions to protect against the harmful effects of asbestos exposure and/or knowingly gave substantial assistance or encouragement to those who did so; and,

d. were otherwise negligent.

50. As a direct and proximate result of the negligence of the Defendants, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, requires medical monitoring, and was otherwise damaged.

51. As a direct and proximate result of the negligence of the Defendants, Plaintiff-spouse has suffered, and will continue to suffer great pain and suffering, mental anguish, a loss of consortium, society, companionship, support, and dependency, and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

## **COUNT II**

52. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

53. At all relevant times, the Defendants, as part of their regular business, mined, processed, manufactured, designed, supplied, delivered, and sold and/or knowingly gave substantial assistance or encouragement to those who did so, asbestos and asbestos-containing products and put them into the stream of commerce in a defective, unsafe, and inherently dangerous condition, and failed to provide reasonable warnings.

54. The asbestos and asbestos-containing products were expected to, and did reach such persons, including Plaintiff, without substantial change in the condition in which they were sold and/or supplied.

55. At all relevant times, the asbestos and asbestos-containing products were used and employed for the purposes for which they were mined, processed, manufactured, designed, supplied, delivered, sold, and intended to be used and in a manner foreseeable to the Defendants.

56. As a direct and proximate result of the defective, dangerous, and unsafe condition of the asbestos and asbestos-containing products that Defendants placed into the stream of commerce, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, and required medical monitoring.

57. As a direct and proximate result of the defective, dangerous, and unsafe condition of the asbestos and asbestos-containing products that Defendants placed into the stream of commerce, Plaintiff-spouse has suffered, and will continue to suffer, great pain and suffering, mental anguish, a loss of society, consortium, companionship, support, dependency and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

### **COUNT III**

#### **JANICE E. BRADFORD WEST v. DEFENDANTS**

58. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

59. The Defendants expressly and impliedly warranted that the asbestos and asbestos-containing products that they mined, processed, manufactured, designed, supplied, delivered, and sold were fit for use, were merchantable, and were reasonably safe for the purpose intended.

60. The Defendants breached their warranty in that the asbestos and asbestos-containing products were defective, unsafe, unreasonably dangerous, ultra-hazardous, and unsuitable for the purpose intended.

61. As a direct and proximate result of the breach by the Defendants, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, required medical monitoring, was otherwise damaged.

62. As a direct and proximate result of the breach by the Defendants, Plaintiff-spouse has suffered, and will continue to suffer great pain and suffering, mental anguish, a loss of consortium, society, companionship, support, and dependency, and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

#### COUNT IV

63. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

64. The acts and omissions of Defendants that were the direct and proximate cause of Plaintiffs' injuries were willful, malicious, wanton, undertaken with reckless disregard of the rights of Plaintiffs, and were grossly negligent.

WHEREFORE Plaintiffs demand judgment and punitive damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.



**COUNT V**

**AGAINST INTERNATIONAL PAPER COMPANY,  
KIMBERLY-CLARK CORPORATION;  
SAPPI FINE PAPER NORTH AMERICA; and  
MAINE YANKEE ATOMIC POWER COMPANY**

65. The condition of Plaintiff is a direct and proximate result of the negligence of the Defendants, both jointly and severally, in that as premise owners, owned and/or operated premises that were unsafe due to a latent hazardous condition, i.e. transportable, respirable asbestos dust and fibers, as follows:

- a. The Defendants knew that asbestos was present in their mills;
- b. The Defendants failed to advise Plaintiff and/or his employer that he might encounter asbestos in the form of block insulation, pipe covering, gaskets, packing, and other forms during the course of his working at the premises;
- c. The Defendants failed to advise Plaintiff and/or his employer that protective equipment should be utilized when working in areas in which asbestos could be encountered;
- d. The Defendants failed to maintain their premises in a reasonably safe condition and/or properly mark those areas in which asbestos in its' various forms could be encountered;
- e. The Defendants failed to test and properly identify where asbestos could be encountered within their mill, prior to business invitees such as Plaintiff coming onto the premises to perform work; and
- f. The Defendants are negligent for otherwise failing to comply with the applicable State and Federal laws and standards for protecting a business invitee such as Plaintiff.

WEHREFORE Plaintiffs demand damages of Defendants, jointly and severally, plus interest, costs and whatever other further relief this Honorable Court deems right and just.

## COUNT VI

66. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

67. Defendants, individually and as agents of one another and as co-conspirators, aided, abetted, encouraged, counseled, assisted, agreed, and conspired among themselves and with other asbestos manufacturers and distributors to injure Plaintiffs.

68. The Defendants knew that the others' conduct constituted a breach of duty and gave substantial assistance or encouragement to the other so to conduct itself.

69. The Defendants acted in the following fashion:

a. Metropolitan Life Insurance Company (Met Life) required a tangible quid pro quo from McGill University in the 1920s in exchange for them providing funding for a study of asbestos disease in Canadian miners. The study revealed asbestos miners suffered from asbestosis. The study was never published and agents of Met Life materially misrepresented in the published literature this known fact.

b. In 1932, Met Life, through its agents Dr. Anthony Lanza, Dr. Fellows, and others, assisted the Johns-Manville Corporation with medical examinations of over 1,000 employees of Johns-Manville's factory in Manville, New Jersey. The report of his study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and therefore was unavailable to scientists studying the issue of asbestos disease. Further collaboration between the conspiring asbestos producers and Met Life officials continued this trend of intentional cover-up.

c. Beginning in approximately 1934, Johns-Manville Corporation, through its agents, Vandiver Brown and attorney J.C. Hobart, and conspirator Raybestos-Manhattan, through its agents, Sumner Simpson and J. Rohrbach, suggested to Dr. Lanza, Associate Medical Director of Met Life (insurers of Manville, Raybestos, and others) that Dr. Lanza publish a study on asbestosis in which Dr. Lanza would affirmatively misrepresent a material fact about asbestos exposure; i.e., the seriousness of the disease process, asbestosis. This was accomplished through intentional deletion of Dr. Lanza's description of asbestosis as "fatal" and through other selective editing at the behest of the asbestos industry that affirmatively misrepresented asbestos as a disease process less serious than it actually is and was known to be then. As a result, Dr. Lanza's study was published in the medical literature in this misleading fashion in 1935. The defendants were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raybestos, and others, as well as Met Life, the insurer.

d. In 1936, conspirators American Brake Block Corporation, Asbestos Manufacturing Company, Gatke Corporation, Johns-Manville Corporation, Keasby & Mattison Company (then an alter-ego to conspirator Turner & Newall), Raybestos-Manhattan, Russell Manufacturing (whose liabilities have been assumed by H.K. Porter Company), Union Asbestos and Rubber Company, and United States Gypsum Company, entered into an agreement with the Saranac Laboratories. Under this agreement, these companies acquired the power to decide what information Saranac Laboratories could publish about asbestos disease and control in what form such publications were to occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to

suppress material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data resulting in numerous misstatements of fact being made at scientific meetings.

e. On November 11, 1948, representatives of the following conspirators met at the headquarters of Johns-Manville Corporation: American Brake Block Division of American Brake and Shoe Foundry, Gatke Corporation, Keasby & Mattison Company (then an alter-ego to conspirator Turner & Newall) Raybestos-Manhattan, Inc., Thermoid Company (whose assets and liabilities were later purchased by H.K. Porter Company,) Union Asbestos and Rubber Company and United States Gypsum Company. U.S. Gypsum did not send a representative to the meeting, but instead authorized Vandiver Brown of Johns-Manville to represent its interest at the meeting and to take action on its behalf.

f. At this November 11, 1948 meeting, these defendants and their representatives decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved the carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos-containing products.

g. At this meeting, the defendants intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensity of asbestos and the health effects of asbestos on humans and the critique of the dust standards and then published it in the medical literature as edited by Dr. Arthur Vorwald. The acts of these defendants were carried out by co-conspirator Defendant Met Life's agent, Dr. Lanza. These defendants thereby fraudulently misrepresented the risks of

asbestos exposure to the public, in general, and the class of persons exposed to asbestos, including Plaintiffs.

h. As a direct result of influence exerted by the above-described conspirators, Dr. Vorwald published Dr. Gardner's edited work in January, 1951, in the Archives of Industrial Hygiene and Occupational Medicine (Vol. 3, No. 1), a journal of the American Medical Association. The published version stressed those portions of Gardner's work that the conspirators wished stressed, but omitted references to cancer, to human asbestosis, and to the inadequacy of the then-established threshold limit values (TLVs). Furthermore, that article made a false claim that the published report was the "complete survey" of Dr. Gardner's work. The defendants thereby fraudulently, affirmatively, and deliberately disseminated this misleading Dr. Vorwald publication to university libraries, government officials, medical doctors, agencies, the public, and others.

i. Such action constituted a material affirmative misrepresentation of the total context of material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was less of a health problem than Dr. Gardner's unedited work indicated.

j. The following conspirators and others were members of the trade association known as Quebec Asbestos Mining Association (Q.A.M.A.): Johns-Manville Corporation, Carey-Canada (individually and as successor to Quebec Asbestos Corporation), the Celotex Corporation (successor to Quebec Asbestos Corporation) National Gypsum Company (n/k/a Asbestos Claims Management Corporation), and Turner & Newall (individually and successor to Bell Asbestos). The members of Q.A.M.A. participated in the above-described misrepresentation of the work of Dr. Gardner published by Dr. Vorwald in the A.M.A. 's

Archives of Industrial Hygiene and Industrial Medicine in 1951. Evidence of the Q.A.M.A.'s involvement in this misrepresentation arises from co-conspirator Johns-Manville's membership in the Q.A.M.A., as well as correspondence from co-conspirators all indicating close monitoring of the editing process by Q.A.M.A.'s representative, Ivan Sabourin, acting on behalf of all Q.A.M.A.'s members.

k. Defendants who were members of the Q.A.M.A., began on or about 1950 to formulate a plan to influence public opinion about the relationship between asbestos and cancer by influencing the medical literature on this subject and then touting and disseminating this literature to the public and to organizations and legislative bodies responsible for regulatory controls of asbestos with the specific intent of misrepresenting the existing scientific information and suppressing contrary scientific data in their possession and control.

l. This plan of misrepresentation and influence over the medical literature began on or about 1950 when the Q.A.M.A. members selected Saranac Laboratories to do an evaluation of whether cancer was related to asbestos. After a preliminary report authored by Dr. Vorwald in 1952 indicated that a cancer/asbestos relationship might exist in experimental animals, the Q.A.M.A. members refused to further fund the study and it was terminated and never publicly discussed.

m. As a result of the termination of this study, these defendants fraudulently withheld information from the public and affirmatively misrepresented to the public and responsible legislative and regulatory bodies that asbestos did not cause cancer, including affirmative misrepresentations by conspirators' agents Dr. Kenneth W. Smith, Dr. Paul Cartier, Dr. Arthur J. Vorwald, Dr. Anthony J. Lanza, Vandiver Brown, and Ivan Sabourin, said misrepresentations being directed to, inter alia, U.S. Government officials, Canadian government

officials, U.S. National Cancer Institute, other medical organizations, and the general public, including Plaintiffs.

n. Subsequently, the Q.A.M.A. defendant conspirators contracted with the Industrial Hygiene Foundation (I.H.F.) and Dr. Daniel Braun to further study the relationship between asbestos exposure, asbestosis and lung cancer. In 1957, Drs. Braun and Truan reported to the Q.A.M.A. that asbestosis did increase a worker's chances of incurring lung cancer.

o. The Q.A.M.A. defendants thereafter caused, in 1958, a publication of the work by Braun and Truan in which the findings regarding increased incidence of cancer in persons with asbestosis was edited out by agents of the Q.A.M.A. The published version of this study contained a conclusion that asbestos exposure did not increase the incidence of lung cancer, a conclusion known by the defendant conspirators to be patently false.

p. By falsifying and causing publication of studies concluding that asbestos exposure did not cause lung cancer and simultaneously omitting a documented finding that asbestosis did increase the risk of lung cancer, the Q.A.M.A. defendants affirmatively misrepresented to the public and concealed from the public the extent of risks associated with inhalation of asbestos fibers.

q. In approximately 1958, the Q.A.M.A. defendants publicized the edited works of Drs. Braun and Truan at a symposium in an effort to fraudulently misrepresent to the public and persons exposed to asbestos that the inhalation of asbestos dust would not cause cancer.

r. The fraudulent misrepresentations beginning in 1946, as elaborated above and continuing with the publication of the 1958 Braun/Truan study, influenced the standards set for the TLVs, and inhibited the lowering of the threshold limit value due to the cancer risk

associated with asbestos inhalation.

s. In 1967, the Q.A.M.A. defendants determined at their trade association meeting that they would intentionally mislead consumers about the extent of risks involved in inhalation of asbestos products.

t. In 1952, a symposium regarding the health effects of asbestos was held at the Saranac Laboratories. The following conspirators were in attendance: Johns-Manville, Turner & Newall, Raybestos-Manhattan, and Q.A.M.A. members by way of their agents, Cartier, Sabourin, and LeChance.

u. At this meeting, the occurrence of lung cancer and asbestosis in product users was discussed and the carcinogenic properties of all fiber types of asbestos was also discussed. In an affirmative attempt to mislead the public about the extent of health risks associated with asbestos, and in an effort to fraudulently conceal those risks from the public, these defendants conspired to prevent publication of the record of this 1952 Saranac Symposium and it was not published. In addition, the conspirators induced Dr. Vorwald not to announce the results of his and Dr. Gardner's animal studies showing excess cancers in animals that thereby fraudulently misrepresenting existing data, albeit secret, that could not be publicized because of the secrecy provisions contained in the 1936 Saranac agreement required by the asbestos industry members.

v. The following conspirators were members of the Magnesia Insulation Manufacturers Association (MIMA): Philip-Carey Corporation (predecessors to Celotex) Johns-Manville, and others.

w. In 1955, these conspirators caused to be published the MIMA 85% Magnesia Insulation Manual. This manual falsely and fraudulently misrepresented that



asbestos-containing products offered no hazard to workers who used these products.

x. The following conspirators were members of the trade organization known as the Asbestos Textile Institute (ATI): Raybestos-Manhattan, Johns-Manville, H.K. Porter, Keasby & Mattison (individually and through its alter-ego Turner & Newall), National Gypsum (n/k/a Asbestos Claims Management Corporation), and others.

y. In 1947, the members of the ATI, received a report from W.C.L. Hemeon regarding asbestosis that suggested re-evaluation of the then-existing TLVs for asbestos exposure. These defendants caused this report not to be published and thereby fraudulently concealed material facts about asbestos exposure from the public and affirmatively misrepresented to the public and class of persons exposed to asbestos that the then-existing TLV was acceptable. Thereafter, these defendant conspirators withheld additional material information on the dust standards from The American Conference of Governmental Industrial Hygienists (ACGIH), thereby further influencing evaluations of TLVs for asbestos exposure.

z. In 1953, conspirator National Gypsum (n/k/a Asbestos Claims Management Corporation), through its agents, in response to an inquiry from the Indiana Division of Industrial Hygiene regarding health hazards of asbestos spray products, refused to mail a proposed response to that division indicating that respirators should be worn by applicators of the products. National Gypsum's response distorted and fraudulently misrepresented the need for applicators of asbestos spray products to wear respirators and fraudulently concealed from such applicators the need for respirators.

aa. In 1955, conspirator Johns-Manville, through its agent Kenneth W. Smith, M.D. caused to be published in the AMA Archives of Industrial Health, an article entitled "Pulmonary Disability in Asbestos Workers." This published study materially altered the results

of an earlier study in 1949 concerning the same set of workers. This alteration of Dr. Smith's study constituted a fraudulent and material misrepresentation about the extent of the risk associated with asbestos inhalation.

bb. In 1955, the National Cancer Institute held a meeting at which conspirators Johns-Manville (individually and as an agent for other alleged co-conspirators) and Dr. Vorwald (as agent of co-conspirators) affirmatively misrepresented that there were no existing animal studies concerning the relationship between asbestos exposure and cancer, when, in fact, the conspirators were in secret possession of several studies that demonstrated that positive evidence did exist.

cc. In 1957, the members of the ATI, jointly rejected a proposed research study on cancer and asbestos and this resulted in fraudulent concealment from the public of material facts regarding asbestos exposure and also constituted an affirmative misrepresentation of the then-existing knowledge about asbestos exposure and lung cancer.

dd. In 1964 the members of the ATI met to formulate a plan for rebutting the association between lung cancer and asbestos exposure that had been recently discussed by Dr. Irving J. Selikoff. Thereafter, these members of the ATI embarked upon a campaign to further misrepresent the association between asbestos exposure and lung cancer.

ee. In 1970, through their agents, Defendants The Celotex Corporation and Carey-Canada, affirmatively misrepresented that it had been in the asbestos business since 1918 and found no reported conditions of asbestosis or lung disease. This constituted a fraudulent misrepresentation about the material facts known to these Defendants.

ff. All conspirators approved and ratified and furthered the previous conspiratorial acts of conspirators Johns-Manville, Raybestos Manhattan, and Anthony J. Lanza,

M.D., acting on behalf of Met Life, and all alleged co-conspirators during the relevant time period and circumstances alleged above, acted as agents and co-conspirators for the other conspirators.

70. All defendants:

- a. did a tortious act in concert with the other or pursuant to a common design with them; and/or
- b. knew that each other's conduct constituted a breach of duty and they each gave substantial assistance or encouragement to the other so to conduct himself; and/or
- c. gave substantial assistance to the other in accomplishing a tortious result and its own conduct, separately considered, constitutes a breach of duty to the Plaintiffs.

71. The acts of the defendants as described above, constitute a fraudulent concealment and/or a fraudulent misrepresentation that proximately caused injury to the Plaintiffs in the following manner:

- a. The material published or caused to be published by the defendants was false and incomplete in that the Defendants knowingly and deliberately deleted references to the known health hazards of asbestos and asbestos-containing products.
- b. Defendants individually, as members of a conspiracy, as agents of other co-conspirators, and as aiders and abettors of each other intended that the publication of false and misleading reports and/or the nondisclosure of documented reports of the health hazards of asbestos:
  - i. maintain a favorable atmosphere for the continued sale and distribution of asbestos and asbestos-related products;

ii. assist in the continued pecuniary gain of the defendants through the sale of their products;

iii. influence in the defendants' favor proposed legislation to regulate asbestos exposure and;

iv. to provide a defense in lawsuits brought for injury resulting from asbestos disease.

c. Plaintiffs reasonably relied upon the published medical and scientific data documenting the purported safety of asbestos and asbestos-containing products and the absence of published medical and scientific reports on the extent, nature, and existence of hazards of asbestos and asbestos-containing products to continue exposure to asbestos because of a belief that it was safe.

d. Defendants individually, as members of a conspiracy, and as agents of each other intended that Plaintiffs rely upon the published report regarding the safety of asbestos and asbestos-containing products and upon the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-related products, to continue his exposure to these products.

e. Defendants individually, as members of a conspiracy, as agents of each other, as aiders and abettors of each other are and were in a position of superior knowledge regarding the health hazards of asbestos and therefore Plaintiffs had a right to rely on the published reports commissioned by the defendants regarding the health hazards of asbestos and the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-containing products.

f. Plaintiffs suffered and will continue to suffer injury as a direct and proximate result of the acts alleged herein.

72. As a direct and proximate result of the acts of the Defendants, Plaintiff-worker suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, and was otherwise damaged.

## **COUNT VII**

### **JANICE E. BRADFORD WEST V. ALL DEFENDANTS**

73. As a direct and proximate result of the acts of the Defendants, Plaintiff-spouse has been damaged as follows:

a. Plaintiff has been and will continue to be deprived of the services, society and companionship of her husband;

b. Plaintiff has been required to spend money for medicine, medical care, nursing, hospital and surgical attention, medical appliances, and household care for the treatment of her husband;

c. Plaintiff has been and may be deprived of the household contribution of her husband; loss of pension and social security benefits.

WHEREFORE Plaintiff demands judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

Plaintiffs hereby demand a trial by jury.

By their attorneys,

/s/ Vincent L. Greene  
Robert J. McConnell, Esq. (#3888)  
Vincent L. Greene, Esq. (#5971)  
**MOTLEY RICE LLC**  
55 Cedar Street  
Suite 100  
Providence, RI 02903  
401-457-7700  
401-457-7708 Fax

Providence, RI

Dated: August. 31, 2018

# EXHIBIT B

STATE OF RHODE ISLAND AND



PROVIDENCE PLANTATIONS

**SUPERIOR COURT****SUMMONS**

<b>Plaintiff</b> Merle C. West v. <b>Defendant</b> Air & Liquid Systems Corporation	<b>Civil Action File Number</b> PC-2018-6293 <b>Attorney for the Plaintiff or the Plaintiff</b> Vincent L. Greene, Iv <b>Address of the Plaintiff's Attorney or the Plaintiff</b> 55 CEDAR STREET SUITE 100 PROVIDENCE RI 02903
Licht Judicial Complex Providence/Bristol County 250 Benefit Street Providence RI 02903 (401) 222-3250	<b>Address of the Defendant</b> CT Corporation System 450 Veterans Memorial Parkway, Suite 7A East Providence, RI 02914 Defendant: General Electric Company

**TO THE DEFENDANT, General Electric Company:**

The above-named Plaintiff has brought an action against you in said Superior Court in the county indicated above. You are hereby summoned and required to serve upon the Plaintiff's attorney, whose address is listed above, an answer to the complaint which is herewith served upon you within twenty (20) days after service of this Summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court.

As provided in Rule 13(a) of the Superior Court Rules of Civil Procedure, unless the relief demanded in the complaint is for damage arising out of your ownership, maintenance, operation, or control of a motor vehicle, or unless otherwise provided in Rule 13(a), your answer must state as a counterclaim any related claim which you may have against the Plaintiff, or you will thereafter be barred from making such claim in any other action.

This Summons was generated on 8/31/2018.

/s/ Henry Kinch  
Clerk

Witness the seal/watermark of the Superior Court

A true copy attest

*Frnt J. Kelly* # 6070  
 Date 9.7.18



STATE OF RHODE ISLAND AND



PROVIDENCE PLANTATIONS

**SUPERIOR COURT**

**Plaintiff**

Merle C. West

v.

**Defendant**

Air & Liquid Systems Corporation

**Civil Action File Number**

PC-2018-6293

**PROOF OF SERVICE**

I hereby certify that on the date below I served a copy of this Summons, complaint, Language Assistance Notice, and all other required documents received herewith upon the Defendant, General Electric Company, by delivering or leaving said papers in the following manner:

☐ With the Defendant personally.

☐ At the Defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person of suitable age and discretion \_\_\_\_\_

Address of dwelling house or usual place of abode \_\_\_\_\_

Age \_\_\_\_\_

Relationship to the Defendant \_\_\_\_\_

☐ With an agent authorized by appointment or by law to receive service of process.

Name of authorized agent \_\_\_\_\_

If the agent is one designated by statute to receive service, further notice as required by statute was given as noted below.

☐ With a guardian or conservator of the Defendant.

Name of person and designation \_\_\_\_\_

☐ By delivering said papers to the attorney general or an assistant attorney general if serving the state.

☐ Upon a public corporation, body, or authority by delivering said papers to any officer, director, or manager.

Name of person and designation \_\_\_\_\_

STATE OF RHODE ISLAND AND



PROVIDENCE PLANTATIONS

**SUPERIOR COURT**

Upon a private corporation, domestic or foreign:

☐ By delivering said papers to an officer or a managing or general agent.

Name of person and designation \_\_\_\_\_

☐ By leaving said papers at the office of the corporation with a person employed therein.

Name of person and designation \_\_\_\_\_

☐ By delivering said papers to an agent authorized by appointment or by law to receive service of process.

Name of authorized agent \_\_\_\_\_

If the agent is one designated by statute to receive service, further notice as required by statute was given as noted below.

☐ I was unable to make service after the following reasonable attempts: \_\_\_\_\_SERVICE DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Day Year

SERVICE FEE \$ \_\_\_\_\_

Signature of SHERIFF or DEPUTY SHERIFF or CONSTABLE \_\_\_\_\_

SIGNATURE OF PERSON OTHER THAN A SHERIFF or DEPUTY SHERIFF or CONSTABLE MUST BE NOTARIZED.

Signature \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ ☐ personally known to the notary or ☐ proved to the notary through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person who signed above in my presence, and who swore or affirmed to the notary that the contents of the document are truthful to the best of his or her knowledge.

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Notary identification number: \_\_\_\_\_

**STATE OF RHODE ISLAND  
PROVIDENCE, SC**

**SUPERIOR COURT**

**MERLE C. WEST and JANICE E. BRADFORD WEST,  
his wife,**

***Plaintiffs,***

**v.**

**CIVIL ACTION NO.:**

**AIR & LIQUID SYSTEMS CORPORATION,  
AURORA PUMP COMPANY,  
ARMSTRONG PUMPS, INC.,  
ALBANY INTERNATIONAL, a Corporation,  
ALLIED GLOVE CORPORATION,  
BAYER CROPSCIENCE f/k/a Amchem PRODUCTS,  
BELL & GOSSETT,  
BSM PUMP CORP. formerly BROWN AND SHARPE,  
CBS CORPORATION,  
CRANE COMPANY,  
DEZURIK, INC.,  
EATON CORPORATION,  
ECR INTERNATIONAL, as successor-in-interest to Utica Boiler Company,  
FLOWSERVE CORPORATION,  
FOSTER WHEELER, LLC,  
VIACOM INC.,  
GARDNER-DENVER, INC.,  
GENERAL ELECTRIC COMPANY,  
GOULD PUMPS,  
GRINNELL, LLC,  
HAMMOND VALVE COMPANY,  
HONEYWELL INTERNATIONAL, INC.,  
IMO INDUSTRIES, INC.,  
INDUSTRIAL HOLDINGS CORPORATION f/k/a Carborundum Co.,  
INGERSOLL-RAND COMPANY,  
INTERNATIONAL PAPER CO.,  
MAINE YANKEE ATOMIC POWER COMPANY,  
METROPOLITAN LIFE INSURANCE COMPANY,  
MILWAUKEE VALVE CO,  
NEW ENGLAND INSULATION, INC.,  
NEW YORKER BOILER COMPANY,  
THE WM. POWELL COMPANY,  
P.I.C. CONTRACTORS, INC.,  
PACKINGS & INSULATIONS CORPORATION,**

**RAINBIRD CORPORATION,  
KIMBERLY-CLARK CORPORATION,  
successor-in-interest to Scott Paper Company,  
WARREN PUMPS,  
PEERLESS PUMPS, INC.,  
SAPPI FINE PAPER NORTH AMERICA,  
successor-in-interest to S. D. Warren Company,  
SEARS ROEBUCK & COMPANY,  
SID HARVEY INDUSTRIES, INC.,  
Successor-in-interest to Sid Harvey of New England, Inc.,  
THE GAGE COMPANY,  
TRANE COMPANY, successor-in-interest to American Standard, Inc.,  
VELAN VALVE CORPORATION,  
F. W. WEBB COMPANY,  
WHEELER PROTECTIVE APPAREL, INC.,**

*Defendants.*

**COMPLAINT AND JURY DEMAND**

1. Plaintiffs Merle C. West and Janice E. West, his wife are individuals residing at 1098 West Alna Road, Alna, ME 04535.

2 Plaintiff Merle C. West worked as a boilermaker and machinist at Bath Iron Works from 1967 to 1972 and from 1978 to 1987; as a carpenter-millwright for Cianbro and for other contractors between 1988 and 1999 at various industrial sites.

3. Defendant Air & Liquid Systems Corporation is the successor-in-interest to Buffalo Pumps, Inc. is a Delaware corporation with its principal place of business in Albany, New York and at all relevant times it did business in the States of Rhode Island and Maine.

4. Defendant Aurora Pump Company is a North Carolina corporation with its principal place of business in Illinois and at all relevant times it did business in the State of Rhode Island and in the States of Rhode Island and Maine.

5. Defendant Armstrong Pumps, Inc. is a New York corporation with its principal place of business in the State of New York and at all times relevant did business in the States of Rhode Island and Maine.

6. Defendant Albany International, Inc. is a Delaware Corporation with its principal place of business in Albany, New York and at all times relevant did business in the States of Rhode Island and Maine.

7. Defendant Allied Glove Corporation is a Delaware corporation with its principal place of business located in Milwaukee, WI and at all times relevant did business in the State of Rhode Island and Maine.

8. Defendant Bayer Cropscience, Inc. is a Delaware corporation with its principal place of business in Pennsylvania and at all times relevant it did business in the States of Rhode Island and Maine.

9. Defendant Bell & Gossett is an Illinois corporation with its principal place of business in Morton Grove, Ill and at all times relevant did business in the States of Rhode Island and Maine.

10. Defendant BSM Pump Corp. formerly Brown and Sharpe is a Rhode Island corporation with its principal place of business located in N. Kingstown, RI and at all times relevant also did business in the State of Maine.

11. Defendant CBS Corporation, n/k/a Viacom, Inc. is a New York corporation with its principal place of business in New York and at all relevant times it did business in the States of Rhode Island and Maine.

12. Defendant Crane Co. is a New Jersey corporation with its principal place of

business in New Jersey. At all relevant times it did business in the States of Rhode Island and Maine.

13. Defendant DeZurik, Inc. is a Kansas corporation with its principal place of business located in Ellsworth, KS and at all times relevant did business in the States of Rhode Island and Maine.

14. Defendant Eaton Corporation, successor-in-interest to Cutler-Hammer, Inc. is an Ohio corporation with its principal place of business located in Cleveland, Ohio and at all times relevant did business in the States of Rhode Island and Maine.

15. Defendant ECR International is a New York corporation with its principal place of business in New York, is successor-in-interest to Utica Boiler Company and at all times relevant hereto did business in the State of Rhode Island and State of Maine.

16. Defendant Flowserve Corporation, successor-in-interest to Durametallic is a Michigan corporation with its principal place of business located in Kalamazoo, MI and at all times relevant did business in the States of Rhode Island and Maine.

17. Defendant Foster Wheeler, LLC is a New York corporation with its principal place of business located in New Jersey and at all times relevant did business in the States of Rhode island and Maine.

18. Defendant Gardner-Denver, Inc. is a Pennsylvania corporation with principal place of business located in Philadelphia, Pa. and at all times relevant did business in the States of Rhode Island and Maine.

19 Defendant General Electric Company is a New York corporation with its principal place of business in New York and at all relevant times it did business in the States of

Rhode Island and Maine.

20. Defendant Gould Pumps is a New Jersey corporation with its principal place of business in New Jersey and at all relevant times it did business in the States of Rhode Island and Maine.

21. Defendant Grinnell, LLC is a Mississippi corporation with principal place of business located in Upper Saddle River, New Jersey and at all times relevant did business in the States of Maine and Rhode Island.

22. Defendant Hammond Valve Company is a Wisconsin corporation with its principal place of business located in New Berlin, WI and at all times relevant did business in the States of Rhode Island and Maine.

23. Defendant Honeywell International, Inc. is a Delaware corporation, having its principal place of business located in Pittsburgh, Pa. and is qualified to do business in the States of Rhode Island and Maine.

24. The Defendant, IMO Industries, Inc., f/k/a IMO Delaval, Inc., f/k/a Transamerica DeLaval, Inc., f/k/a DeLaval Turbine, Inc., DeValco Corporation is a corporation incorporated under the laws of the state of New York, having its principal place of business located in New York, and at all times relevant did business in the States of Rhode Island and Maine.

25. Defendant Industrial Holdings Corp. successor-in-interest to Carborundum Company is a New York corporation with principal place of business located in New York and at all times relevant did business in the States of Rhode Island and Maine.

25. Defendant Ingersoll-Rand Co. is a New Jersey corporation with its principal place of business in New Jersey and at all relevant times it did business in the States of Rhode Island

and Maine.

26. Defendant International Paper Company is a New York corporation with its principal place of business in Memphis, TN and at all relevant times did business in the States of Rhode Island and Maine.

27. Defendant Maine Yankee Atomic Power Company is a Maine corporation with principal place of business located in Wiscasset, ME is successor-in-interest to Maine Yankee, Inc. and at all times relevant did business in the States of Maine and Rhode Island.

28. Defendant Metropolitan Life Insurance Company is a mutual life insurance company of the State of New York with its principal place of business in the State of New York and at all relevant times it did business in the States of Rhode Island and Maine.

29. Defendant Milwaukee Valve Co. is a Wisconsin corporation with principal place of business located in Madison, WI and at all times relevant did business in the States of Rhode Island and Maine.

30. Defendant New England Insulation, Inc. is a Massachusetts corporation with its principal place of business located in Canton, Massachusetts and at all times relevant did business in the State of Rhode Island and Maine.

31. Defendant New Yorker Boiler Company is a Pennsylvania corporation with its principal place of business located in Hatfield, Pa. and at all times relevant did business in the States of Maine and Rhode Island.

32. Defendant P.I.C. Contractors, Inc. is a Rhode Island corporation with its principal place of business in Rhode Island. At all relevant times it did business in the States of Rhode Island and Maine.

33. Defendant Packings and Insulations Corporation is a Rhode Island corporation



with its principal place of business in Rhode Island and at all relevant times it did business in the States of Rhode Island and Maine.

34. Defendant Rainbird Corporation is a California corporation with principal place of business located in Azusa, CA, is successor-in-interest to Hammond Valve Company and at all times relevant did business in the States of Rhode Island and Maine.

35. Defendant Kimberly-Clark Corporation is a Delaware corporation with its principal place of business located in Irving, TX and at all relevant times did business in the States of Rhode Island and Maine.

36. Defendant Peerless Pumps, Inc. is a Delaware corporation with principal place of business located in Indianapolis, IN and at all times relevant did business in the State of Rhode Island and State of Maine.

37. Defendant Sappi Fine Paper North America is the successor-in-interest to S. D. Warren Paper is a Delaware Corporation with principal place of business located in Pennsylvania and at all times relevant did business in the State of Rhode Island and State of Maine.

38. Defendant Warren Pumps is a Massachusetts corporation with its principal place of business in Massachusetts and, at all relevant times it did business in the States of Rhode Island and Maine.

39. Defendant Sears Roebuck & Company is a New York corporation with its principal place of business in Chicago, and at all times relevant did business in the State of Rhode Island and State of Maine.

40. Defendant Sid Harvey Industries, Inc., successor-in-interest to Sid Harvey of New England, Inc. is a New York corporation with its principal place of business in Garden City, NY

and at all times material relevant did business in the State of Rhode Island and Maine.

41. Defendant The Gage Company is a Pennsylvania corporation with its principal place of business located in Portland, ME and at all times relevant did business in the States of Rhode Island and Maine.

42. Defendant Trane Company, successor-in-interest to American Standard, Inc. is a Delaware corporation with principal place of business located in Michigan and at all times relevant did business in the State of Rhode Island and State of Maine.

43. The Defendant, Velan Valve Corporation, is a corporation incorporated under the laws of the State of New York, with its principal place of business located in the State of Vermont and all times relevant did business in the States of Rhode Island and Maine.

44. The Defendant F. W. Webb Company is a Massachusetts corporation with principal offices located in Bedford, MA and at all times relevant did business in the State of Maine and State of Rhode Island.

45. Defendant Wheeler Protective Apparel, Inc., is a New Hampshire corporation with principal place of business located in the State of Illinois and at all times relevant did business in the States of Rhode Island and Maine

### **COUNT I**

46. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

47. Defendants mined, processed, manufactured, designed, supplied, delivered, and sold asbestos and asbestos-containing products and/or knowingly gave substantial assistance or encouragement to those who did so, at all times relevant herein.

48. While at work, Plaintiff was caused to inhale, absorb, ingest, and come into contact with asbestos and asbestos-containing products mined, processed, manufactured, designed, supplied, delivered, and/or sold by Defendants.

49. The Defendants were negligent in that they each, jointly and severally:

a. mined, processed, manufactured, designed, supplied, delivered, and/or sold asbestos and asbestos-containing products, and/or knowingly gave substantial assistance or encouragement to those who did so, that they knew, or reasonably should have known, were dangerous, defective, poisonous, and harmful to an individual's health, body, and life;

b. failed to reasonably warn Plaintiff of the harmful effects of exposure to asbestos and asbestos-containing products and/or knowingly gave substantial assistance or encouragement to those who did so;

c. failed to provide Plaintiff with the knowledge as to possible precautions to protect against the harmful effects of asbestos exposure and/or knowingly gave substantial assistance or encouragement to those who did so; and,

d. were otherwise negligent.

50. As a direct and proximate result of the negligence of the Defendants, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, requires medical monitoring, and was otherwise damaged.

51. As a direct and proximate result of the negligence of the Defendants, Plaintiff-spouse has suffered, and will continue to suffer great pain and suffering, mental anguish, a loss of consortium, society, companionship, support, and dependency, and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

## **COUNT II**

52. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

53. At all relevant times, the Defendants, as part of their regular business, mined, processed, manufactured, designed, supplied, delivered, and sold and/or knowingly gave substantial assistance or encouragement to those who did so, asbestos and asbestos-containing products and put them into the stream of commerce in a defective, unsafe, and inherently dangerous condition, and failed to provide reasonable warnings.

54. The asbestos and asbestos-containing products were expected to, and did reach such persons, including Plaintiff, without substantial change in the condition in which they were sold and/or supplied.

55. At all relevant times, the asbestos and asbestos-containing products were used and employed for the purposes for which they were mined, processed, manufactured, designed, supplied, delivered, sold, and intended to be used and in a manner foreseeable to the Defendants.

56. As a direct and proximate result of the defective, dangerous, and unsafe condition of the asbestos and asbestos-containing products that Defendants placed into the stream of commerce, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, and required medical monitoring.

57. As a direct and proximate result of the defective, dangerous, and unsafe condition of the asbestos and asbestos-containing products that Defendants placed into the stream of commerce, Plaintiff-spouse has suffered, and will continue to suffer, great pain and suffering, mental anguish, a loss of society, consortium, companionship, support, dependency and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

### **COUNT III**

#### **JANICE E. BRADFORD WEST v. DEFENDANTS**

58. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

59. The Defendants expressly and impliedly warranted that the asbestos and asbestos-containing products that they mined, processed, manufactured, designed, supplied, delivered, and sold were fit for use, were merchantable, and were reasonably safe for the purpose intended.

60. The Defendants breached their warranty in that the asbestos and asbestos-containing products were defective, unsafe, unreasonably dangerous, ultra-hazardous, and unsuitable for the purpose intended.

61. As a direct and proximate result of the breach by the Defendants, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, required medical monitoring, was otherwise damaged.

62. As a direct and proximate result of the breach by the Defendants, Plaintiff-spouse has suffered, and will continue to suffer great pain and suffering, mental anguish, a loss of consortium, society, companionship, support, and dependency, and was otherwise damaged.

WHEREFORE Plaintiffs demand judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

#### **COUNT IV**

63. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

64. The acts and omissions of Defendants that were the direct and proximate cause of Plaintiffs' injuries were willful, malicious, wanton, undertaken with reckless disregard of the rights of Plaintiffs, and were grossly negligent.

WHEREFORE Plaintiffs demand judgment and punitive damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

**COUNT V**

**AGAINST INTERNATIONAL PAPER COMPANY,  
KIMBERLY-CLARK CORPORATION;  
SAPPI FINE PAPER NORTH AMERICA; and  
MAINE YANKEE ATOMIC POWER COMPANY**

65. The condition of Plaintiff is a direct and proximate result of the negligence of the Defendants, both jointly and severally, in that as premise owners, owned and/or operated premises that were unsafe due to a latent hazardous condition, i.e. transportable, respirable asbestos dust and fibers, as follows:

- a. The Defendants knew that asbestos was present in their mills;
- b. The Defendants failed to advise Plaintiff and/or his employer that he might encounter asbestos in the form of block insulation, pipe covering, gaskets, packing, and other forms during the course of his working at the premises;
- c. The Defendants failed to advise Plaintiff and/or his employer that protective equipment should be utilized when working in areas in which asbestos could be encountered;
- d. The Defendants failed to maintain their premises in a reasonably safe condition and/or properly mark those areas in which asbestos in its' various forms could be encountered;
- e. The Defendants failed to test and properly identify where asbestos could be encountered within their mill, prior to business invitees such as Plaintiff coming onto the premises to perform work; and
- f. The Defendants are negligent for otherwise failing to comply with the applicable State and Federal laws and standards for protecting a business invitee such as Plaintiff.

WEHREFORE Plaintiffs demand damages of Defendants, jointly and severally, plus interest, costs and whatever other further relief this Honorable Court deems right and just.

## **COUNT VI**

66. Plaintiffs repeat and re-allege all allegations contained in all paragraphs above as if fully set forth herein.

67. Defendants, individually and as agents of one another and as co-conspirators, aided, abetted, encouraged, counseled, assisted, agreed, and conspired among themselves and with other asbestos manufacturers and distributors to injure Plaintiffs.

68. The Defendants knew that the others' conduct constituted a breach of duty and gave substantial assistance or encouragement to the other so to conduct itself.

69. The Defendants acted in the following fashion:

a. Metropolitan Life Insurance Company (Met Life) required a tangible quid pro quo from McGill University in the 1920s in exchange for them providing funding for a study of asbestos disease in Canadian miners. The study revealed asbestos miners suffered from asbestosis. The study was never published and agents of Met Life materially misrepresented in the published literature this known fact.

b. In 1932, Met Life, through its agents Dr. Anthony Lanza, Dr. Fellows, and others, assisted the Johns-Manville Corporation with medical examinations of over 1,000 employees of Johns-Manville's factory in Manville, New Jersey. The report of his study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and therefore was unavailable to scientists studying the issue of asbestos disease. Further collaboration between the conspiring asbestos producers and Met Life officials continued this trend of intentional cover-up.



c. Beginning in approximately 1934, Johns-Manville Corporation, through its agents, Vandiver Brown and attorney J.C. Hobart, and conspirator Raybestos-Manhattan, through its agents, Sumner Simpson and J. Rohrbach, suggested to Dr. Lanza, Associate Medical Director of Met Life (insurers of Manville, Raybestos, and others) that Dr. Lanza publish a study on asbestosis in which Dr. Lanza would affirmatively misrepresent a material fact about asbestos exposure; i.e., the seriousness of the disease process, asbestosis. This was accomplished through intentional deletion of Dr. Lanza's description of asbestosis as "fatal" and through other selective editing at the behest of the asbestos industry that affirmatively misrepresented asbestos as a disease process less serious than it actually is and was known to be then. As a result, Dr. Lanza's study was published in the medical literature in this misleading fashion in 1935. The defendants were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raybestos, and others, as well as Met Life, the insurer.

d. In 1936, conspirators American Brake Block Corporation, Asbestos Manufacturing Company, Gatke Corporation, Johns-Manville Corporation, Keasby & Mattison Company (then an alter-ego to conspirator Turner & Newall), Raybestos-Manhattan, Russell Manufacturing (whose liabilities have been assumed by H.K. Porter Company), Union Asbestos and Rubber Company, and United States Gypsum Company, entered into an agreement with the Saranac Laboratories. Under this agreement, these companies acquired the power to decide what information Saranac Laboratories could publish about asbestos disease and control in what form such publications were to occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to

suppress material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data resulting in numerous misstatements of fact being made at scientific meetings.

e. On November 11, 1948, representatives of the following conspirators met at the headquarters of Johns-Manville Corporation: American Brake Block Division of American Brake and Shoe Foundry, Gatke Corporation, Keasby & Mattison Company (then an alter-ego to conspirator Turner & Newall) Raybestos-Manhattan, Inc., Thermoid Company (whose assets and liabilities were later purchased by H.K. Porter Company,) Union Asbestos and Rubber Company and United States Gypsum Company. U.S. Gypsum did not send a representative to the meeting, but instead authorized Vandiver Brown of Johns-Manville to represent its interest at the meeting and to take action on its behalf.

f. At this November 11, 1948 meeting, these defendants and their representatives decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved the carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos-containing products.

g. At this meeting, the defendants intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensity of asbestos and the health effects of asbestos on humans and the critique of the dust standards and then published it in the medical literature as edited by Dr. Arthur Vorwald. The acts of these defendants were carried out by co-conspirator Defendant Met Life's agent, Dr. Lanza. These defendants thereby fraudulently misrepresented the risks of

asbestos exposure to the public, in general, and the class of persons exposed to asbestos, including Plaintiffs.

h. As a direct result of influence exerted by the above-described conspirators, Dr. Vorwald published Dr. Gardner's edited work in January, 1951, in the Archives of Industrial Hygiene and Occupational Medicine (Vol. 3, No. 1), a journal of the American Medical Association. The published version stressed those portions of Gardner's work that the conspirators wished stressed, but omitted references to cancer, to human asbestosis, and to the inadequacy of the then-established threshold limit values (TLVs). Furthermore, that article made a false claim that the published report was the "complete survey" of Dr. Gardner's work. The defendants thereby fraudulently, affirmatively, and deliberately disseminated this misleading Dr. Vorwald publication to university libraries, government officials, medical doctors, agencies, the public, and others.

i. Such action constituted a material affirmative misrepresentation of the total context of material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was less of a health problem than Dr. Gardner's unedited work indicated.

j. The following conspirators and others were members of the trade association known as Quebec Asbestos Mining Association (Q.A.M.A.): Johns-Manville Corporation, Carey-Canada (individually and as successor to Quebec Asbestos Corporation), the Celotex Corporation (successor to Quebec Asbestos Corporation) National Gypsum Company (n/k/a Asbestos Claims Management Corporation), and Turner & Newall (individually and successor to Bell Asbestos). The members of Q.A.M.A. participated in the above-described misrepresentation of the work of Dr. Gardner published by Dr. Vorwald in the A.M.A. 's

Archives of Industrial Hygiene and Industrial Medicine in 1951. Evidence of the Q.A.M.A.'s involvement in this misrepresentation arises from co-conspirator Johns-Manville's membership in the Q.A.M.A., as well as correspondence from co-conspirators all indicating close monitoring of the editing process by Q.A.M.A.'s representative, Ivan Sabourin, acting on behalf of all Q.A.M.A.'s members.

k. Defendants who were members of the Q.A.M.A., began on or about 1950 to formulate a plan to influence public opinion about the relationship between asbestos and cancer by influencing the medical literature on this subject and then touting and disseminating this literature to the public and to organizations and legislative bodies responsible for regulatory controls of asbestos with the specific intent of misrepresenting the existing scientific information and suppressing contrary scientific data in their possession and control.

l. This plan of misrepresentation and influence over the medical literature began on or about 1950 when the Q.A.M.A. members selected Saranac Laboratories to do an evaluation of whether cancer was related to asbestos. After a preliminary report authored by Dr. Vorwald in 1952 indicated that a cancer/asbestos relationship might exist in experimental animals, the Q.A.M.A. members refused to further fund the study and it was terminated and never publicly discussed.

m. As a result of the termination of this study, these defendants fraudulently withheld information from the public and affirmatively misrepresented to the public and responsible legislative and regulatory bodies that asbestos did not cause cancer, including affirmative misrepresentations by conspirators' agents Dr. Kenneth W. Smith, Dr. Paul Cartier, Dr. Arthur J. Vorwald, Dr. Anthony J. Lanza, Vandiver Brown, and Ivan Sabourin, said misrepresentations being directed to, inter alia, U.S. Government officials, Canadian government



associated with asbestos inhalation.

s. In 1967, the Q.A.M.A. defendants determined at their trade association meeting that they would intentionally mislead consumers about the extent of risks involved in inhalation of asbestos products.

t. In 1952, a symposium regarding the health effects of asbestos was held at the Saranac Laboratories. The following conspirators were in attendance: Johns-Manville, Turner & Newall, Raybestos-Manhattan, and Q.A.M.A. members by way of their agents, Cartier, Sabourin, and LeChance.

u. At this meeting, the occurrence of lung cancer and asbestosis in product users was discussed and the carcinogenic properties of all fiber types of asbestos was also discussed. In an affirmative attempt to mislead the public about the extent of health risks associated with asbestos, and in an effort to fraudulently conceal those risks from the public, these defendants conspired to prevent publication of the record of this 1952 Saranac Symposium and it was not published. In addition, the conspirators induced Dr. Vorwald not to announce the results of his and Dr. Gardner's animal studies showing excess cancers in animals that thereby fraudulently misrepresenting existing data, albeit secret, that could not be publicized because of the secrecy provisions contained in the 1936 Saranac agreement required by the asbestos industry members.

v. The following conspirators were members of the Magnesia Insulation Manufacturers Association (MIMA): Philip-Carey Corporation (predecessors to Celotex) Johns-Manville, and others.

w. In 1955, these conspirators caused to be published the MIMA 85% Magnesia Insulation Manual. This manual falsely and fraudulently misrepresented that

asbestos-containing products offered no hazard to workers who used these products.

x. The following conspirators were members of the trade organization known as the Asbestos Textile Institute (ATI): Raybestos-Manhattan, Johns-Manville, H.K. Porter, Keasby & Mattison (individually and through its alter-ego Turner & Newall), National Gypsum (n/k/a Asbestos Claims Management Corporation), and others.

y. In 1947, the members of the ATI, received a report from W.C.L. Hemeon regarding asbestosis that suggested re-evaluation of the then-existing TLVs for asbestos exposure. These defendants caused this report not to be published and thereby fraudulently concealed material facts about asbestos exposure from the public and affirmatively misrepresented to the public and class of persons exposed to asbestos that the then-existing TLV was acceptable. Thereafter, these defendant conspirators withheld additional material information on the dust standards from The American Conference of Governmental Industrial Hygienists (ACGIH), thereby further influencing evaluations of TLVs for asbestos exposure.

z. In 1953, conspirator National Gypsum (n/k/a Asbestos Claims Management Corporation), through its agents, in response to an inquiry from the Indiana Division of Industrial Hygiene regarding health hazards of asbestos spray products, refused to mail a proposed response to that division indicating that respirators should be worn by applicators of the products. National Gypsum's response distorted and fraudulently misrepresented the need for applicators of asbestos spray products to wear respirators and fraudulently concealed from such applicators the need for respirators.

aa. In 1955, conspirator Johns-Manville, through its agent Kenneth W. Smith, M.D. caused to be published in the AMA Archives of Industrial Health, an article entitled "Pulmonary Disability in Asbestos Workers." This published study materially altered the results

of an earlier study in 1949 concerning the same set of workers. This alteration of Dr. Smith's study constituted a fraudulent and material misrepresentation about the extent of the risk associated with asbestos inhalation.

bb. In 1955, the National Cancer Institute held a meeting at which conspirators Johns-Manville (individually and as an agent for other alleged co-conspirators) and Dr. Vorwald (as agent of co-conspirators) affirmatively misrepresented that there were no existing animal studies concerning the relationship between asbestos exposure and cancer, when, in fact, the conspirators were in secret possession of several studies that demonstrated that positive evidence did exist.

cc. In 1957, the members of the ATI, jointly rejected a proposed research study on cancer and asbestos and this resulted in fraudulent concealment from the public of material facts regarding asbestos exposure and also constituted an affirmative misrepresentation of the then-existing knowledge about asbestos exposure and lung cancer.

dd. In 1964 the members of the ATI met to formulate a plan for rebutting the association between lung cancer and asbestos exposure that had been recently discussed by Dr. Irving J. Selikoff. Thereafter, these members of the ATI embarked upon a campaign to further misrepresent the association between asbestos exposure and lung cancer.

ee. In 1970, through their agents, Defendants The Celotex Corporation and Carey-Canada, affirmatively misrepresented that it had been in the asbestos business since 1918 and found no reported conditions of asbestosis or lung disease. This constituted a fraudulent misrepresentation about the material facts known to these Defendants.

ff. All conspirators approved and ratified and furthered the previous conspiratorial acts of conspirators Johns-Manville, Raybestos Manhattan, and Anthony J. Lanza,





ii. assist in the continued pecuniary gain of the defendants through the sale of their products;

iii. influence in the defendants' favor proposed legislation to regulate asbestos exposure and;

iv. to provide a defense in lawsuits brought for injury resulting from asbestos disease.

c. Plaintiffs reasonably relied upon the published medical and scientific data documenting the purported safety of asbestos and asbestos-containing products and the absence of published medical and scientific reports on the extent, nature, and existence of hazards of asbestos and asbestos-containing products to continue exposure to asbestos because of a belief that it was safe.

d. Defendants individually, as members of a conspiracy, and as agents of each other intended that Plaintiffs rely upon the published report regarding the safety of asbestos and asbestos-containing products and upon the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-related products, to continue his exposure to these products.

e. Defendants individually, as members of a conspiracy, as agents of each other, as aiders and abettors of each other are and were in a position of superior knowledge regarding the health hazards of asbestos and therefore Plaintiffs had a right to rely on the published reports commissioned by the defendants regarding the health hazards of asbestos and the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-containing products.



f. Plaintiffs suffered and will continue to suffer injury as a direct and proximate result of the acts alleged herein.

72. As a direct and proximate result of the acts of the Defendants, Plaintiff-worker suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earnings and earning capacity, and was otherwise damaged.

## **COUNT VII**

### **JANICE E. BRADFORD WEST V. ALL DEFENDANTS**

73. As a direct and proximate result of the acts of the Defendants, Plaintiff-spouse has been damaged as follows:

a. Plaintiff has been and will continue to be deprived of the services, society and companionship of her husband;

b. Plaintiff has been required to spend money for medicine, medical care, nursing, hospital and surgical attention, medical appliances, and household care for the treatment of her husband;

c. Plaintiff has been and may be deprived of the household contribution of her husband; loss of pension and social security benefits.

WHEREFORE Plaintiff demands judgment and damages against the Defendants, jointly and severally, plus interest, costs, and whatever other further relief this Honorable Court deems right and just.

Plaintiffs hereby demand a trial by jury.

By their attorneys,

/s/ Vincent L. Greene

Robert J. McConnell, Esq. (#3888)

Vincent L. Greene, Esq. (#5971)

**MOTLEY RICE LLC**

55 Cedar Street

Suite 100

Providence, RI 02903

401-457-7700

401-457-7708 Fax

Providence, RI

Dated: August. 31, 2018

# EXHIBIT C



CT Corporation

**Service of Process  
Transmittal**

09/07/2018

CT Log Number 534013950

**TO:** Julie Klusza  
Electric Insurance Company  
75 Sam Fonzo Dr  
Beverly, MA 01915-1000

**RE: Process Served in Rhode Island**

**FOR:** General Electric Company (Domestic State: NY)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Merle C. West and Janice E. Bradford West, etc., Pltf. vs. Air & Liquid Systems Corporation, et al., Dfts. // To: General Electric Company

**DOCUMENT(S) SERVED:** Summons, Proof, Attachment, Complaint

**COURT/AGENCY:** STATE OF RHODE ISLAND PROVIDENCE - SUPERIOR COURT, RI  
Case # PC20186293

**NATURE OF ACTION:** Asbestos Litigation - Personal Injury

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, East Providence, RI

**DATE AND HOUR OF SERVICE:** By Process Server on 09/07/2018 at 10:30

**JURISDICTION SERVED :** Rhode Island

**APPEARANCE OR ANSWER DUE:** Within 20 days after service of this Summons upon you, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** Vincent L. Greene, Esq.  
MOTLEY RICE LLC  
55 Cedar Street  
Suite 100  
PROVIDENCE, RI 02903  
401-457-7700

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780122258292  
Image SOP  
Email Notification, Cath Mohan cmohan@McCarter.com  
Email Notification, Cathy Hopson Chopson@McCarter.com  
Email Notification, Julie Klusza Julie.Klusza@electricinsurance.com

**SIGNED:** C T Corporation System  
**ADDRESS:** 450 Veterans Memorial Parkway  
Suite 7A  
East Providence, RI 02914  
**TELEPHONE:** 312-345-4336

# EXHIBIT D



STATE OF RHODE ISLAND

SUPERIOR COURT

PROVIDENCE

C.A. NO. PC 18-6293

MERLE C. WEST and  
JANICE E. BRADFORD WEST

Plaintiff(s),

v.

AIR & LIQUID SYSTEMS CORPORATION, et al.

Defendants.

**NOTICE OF FILING OF NOTICE OF REMOVAL  
TO THE UNITED STATES DISTRICT COURT**

**TO THE JUDGES OF THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND,  
WITHIN AND FOR THE SUPERIOR COURT AT PROVIDENCE, AND TO ALL  
PARTIES TO THIS ACTION:**

Defendant General Electric Co., hereby gives notice to the Court that they have removed the above-captioned lawsuit to the United States District Court for the District of Rhode Island on December 18, 2018. A copy of this Notice of Removal is attached hereto.

DEFENDANT,  
GENERAL ELECTRIC COMPANY,

Dated: December 19, 2018

/s/ Anne E. Shannon  
Anne E. Shannon  
RI Bar #9591  
MCCARTER & ENGLISH, LLP.  
265 Franklin Street  
Boston, MA 02110  
Phone: 617-449-6500

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the Rhode Island Superior Court and a copy was sent to all counsel of record via File & ServeXpress on this 19<sup>th</sup> day of December, 2018. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

Anne E. Shannon  
Anne E. Shannon

# **EXHIBIT D**

## U.S. District Court — Judicial Caseload Profile

MAINE			12-Month Periods Ending						Numerical Standing Within	
			Sep 30 2013	Sep 30 2014	Sep 30 2015	Sep 30 2016	Sep 30 2017	Sep 30 2018		
Overall Caseload Statistics	Filings <sup>1</sup>		767	757	896	906	819	819	U.S.	Circuit
	Terminations		736	734	852	928	846	783		
	Pending		609	626	670	645	623	658	63	4
	Percent Change in Total Filings Current Year Over Earlier Year		6.8	8.2	-8.6	-9.6				
Number of Judgeships			3	3	3	3	3	3		
Vacant Judgeship Months <sup>2</sup>			2.0	6.9	0.0	0.0	3.1	12.0		
Actions per Judgeship	Filings	Total	256	252	299	302	273	273	86	5
		Civil	162	167	189	215	175	173	83	4
		Criminal Felony	71	62	79	55	67	68	65	3
		Supervised Release Hearings	23	23	31	32	32	32	54	1
	Pending Cases <sup>2</sup>		203	209	223	215	208	219	91	5
	Weighted Filings <sup>2</sup>		249	240	294	268	250	251	87	5
	Terminations		245	245	284	309	282	261	84	3
	Trials Completed		21	20	17	19	20	20	28	1
	Median Time (Months)	From Filing to Disposition	Criminal Felony	9.7	10.2	9.8	9.4	10.1	9.4	44
Civil <sup>2</sup>			7.6	8.4	7.4	6.0	7.3	7.8	28	1
From Filing to Trial <sup>2</sup> (Civil Only)		-	22.8	-	-	-	-	-	-	
Other	Number (and %) of Civil Cases Over 3 Years Old <sup>2</sup>		3.8	6.14	8.18	7.15	9.20	15.33	20	2
	Average Number of Felony Defendants Filed per Case		1.2	1.3	1.3	1.1	1.3	1.3		
	Jurors	Avg. Present for Jury Selection	78.3	41.1	43.8	38.9	30.9	42.1		
		Percent Not Selected or Challenged	18.1	22.1	29.1	23.8	23.4	20.6		

## 2018 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense

Type of	Total	A	B	C	D	E	F	G	H	I	J	K	L
Civil	519	142	19	42	2	26	39	47	44	4	111	-	43
Criminal <sup>1</sup>	203	6	94	11	35	17	13	12	-	1	1	7	6

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

<sup>1</sup> Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.<sup>2</sup> See "Explanation of Selected Terms."

## U.S. District Court — Judicial Caseload Profile

## RHODE ISLAND

RHODE ISLAND			12-Month Periods Ending						Numerical Standing Within	
			Sep 30 2013	Sep 30 2014	Sep 30 2015	Sep 30 2016	Sep 30 2017	Sep 30 2018		
Overall Caseload Statistics	Filings <sup>1</sup>		1,283	851	705	826	768	916	U.S.	Circuit
	Terminations		1,750	2,016	1,469	709	872	773		
	Pending		2,706	1,547	786	894	792	938	12	2
	Percent Change in Total Filings Current Year Over Earlier Year		-28.6	7.6	29.9	10.9	19.3			
Number of Judgeships			3	3	3	3	3	3		
Vacant Judgeship Months <sup>2</sup>			0.0	0.0	0.0	12.0	12.0	12.0		
Actions per Judgeship	Filings	Total	428	284	235	275	256	305	84	4
		Civil	353	220	180	228	195	230	76	3
		Criminal Felony	63	53	41	38	41	61	75	4
		Supervised Release Hearings	12	10	14	9	20	15	80	5
	Pending Cases <sup>2</sup>		902	516	262	298	264	313	80	4
	Weighted Filings <sup>2</sup>		323	258	230	248	237	308	79	4
	Terminations		583	672	490	236	291	258	85	4
	Trials Completed		9	7	9	5	7	2	94	5
	Median Time (Months)	From Filing to Disposition	Criminal Felony	7.2	8.1	9.2	9.2	11.2	8.3	27
Civil <sup>2</sup>			32.9	22.0	28.9	10.7	10.5	8.4	37	2
From Filing to Trial <sup>2</sup> (Civil Only)		31.0	-	-	-	-	-	-	-	
Other		Number (and %) of Civil Cases Over 3 Years Old <sup>2</sup>		1,035 40.9	587 41.5	103 15.6	61 7.9	60 9.1	70 9.6	65
	Average Number of Felony Defendants Filed per Case		1.2	1.2	1.2	1.1	1.3	1.2		
	Jurors	Avg. Present for Jury Selection	91.1	77.7	62.0	49.8	42.9	56.6		
		Percent Not Selected or Challenged	55.2	55.1	36.9	33.4	42.0	25.8		

## 2018 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense

Type of	Total	A	B	C	D	E	F	G	H	I	J	K	L
Civil	690	73	40	47	13	53	56	103	78	9	135	-	83
Criminal <sup>1</sup>	182	-	85	14	23	28	7	15	1	4	1	-	4

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

<sup>1</sup> Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.<sup>2</sup> See "Explanation of Selected Terms."

Table C-1.

## U.S. District Courts—Civil Cases Commenced, Terminated, and Pending During the 12-Month Period Ending March 31, 2018

Circuit and District	Total Civil Cases				U.S. Civil Cases				Private Ci	
	Pending March 31, 2017 <sup>1</sup>	Commenced	Terminated	Pending March 31, 2018	Pending March 31, 2017 <sup>1</sup>	Commenced	Terminated	Pending March 31, 2018	Pending March 31, 2017 <sup>1</sup>	Commenced
<b>Total</b>	<b>349,272</b>	<b>277,010</b>	<b>286,969</b>	<b>339,313</b>	<b>51,820</b>	<b>43,604</b>	<b>48,235</b>	<b>47,189</b>	<b>297,452</b>	<b>233,406</b>
<b>DC</b>	3,024	3,030	2,643	3,411	1,575	1,460	1,205	1,830	1,449	1,570
<b>1st</b>	11,754	6,271	7,241	10,784	1,794	1,322	1,502	1,614	9,960	4,949
<b>ME</b>	484	524	575	433	157	187	187	157	327	337
<b>MA</b>	7,545	3,096	4,008	6,633	704	538	655	587	6,841	2,558
<b>NH</b>	526	864	486	904	159	147	176	130	367	717
<b>RI</b>	705	644	640	709	163	127	163	127	542	517
<b>PR</b>	2,494	1,143	1,532	2,105	611	323	321	613	1,883	820
<b>2nd</b>	29,190	25,520	24,400	30,310	5,101	4,766	4,246	5,621	24,089	20,754
<b>CT</b>	2,474	2,275	2,324	2,425	504	444	453	495	1,970	1,831
<b>NY,N</b>	1,879	1,673	1,812	1,740	467	464	437	494	1,412	1,209
<b>NY,E</b>	10,052	7,719	7,992	9,779	1,454	1,199	1,199	1,454	8,598	6,520
<b>NY,S</b>	11,779	11,082	10,104	12,757	1,501	1,225	1,249	1,477	10,278	9,857
<b>NY,W</b>	2,691	2,505	1,901	3,295	1,036	1,336	780	1,592	1,655	1,169
<b>VT</b>	315	266	267	314	139	98	128	109	176	168
<b>3rd</b>	23,632	33,169	23,389	33,412	3,777	3,641	3,688	3,730	19,855	29,528
<b>DE</b>	1,894	2,111	2,028	1,977	112	67	66	113	1,782	2,044
<b>NJ</b>	10,303	18,798	9,047	20,054	1,102	1,359	1,317	1,144	9,201	17,439
<b>PA,E</b>	6,266	6,917	7,080	6,103	1,170	811	880	1,101	5,096	6,106
<b>PA,M</b>	2,807	2,604	2,508	2,903	850	898	905	843	1,957	1,706
<b>PA,W</b>	1,937	2,590	2,566	1,961	443	473	480	436	1,494	2,117
<b>VI</b>	425	149	160	414	100	33	40	93	325	116
<b>4th</b>	78,347	19,750	57,256	40,841	6,875	4,230	4,989	6,116	71,472	15,520
<b>MD</b>	3,504	3,988	3,718	3,774	1,193	801	916	1,078	2,311	3,187
<b>NC,E</b>	2,143	1,609	1,677	2,075	1,101	635	674	1,062	1,042	974
<b>NC,M</b>	1,272	1,135	1,242	1,165	682	420	531	571	590	715
<b>NC,W</b>	1,198	1,236	1,249	1,185	573	411	489	495	625	825